

# RIGHT TO REPAIR: INDUSTRY DECISIONS AND LEGISLATIVE OPTIONS

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## HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED NINTH CONGRESS FIRST SESSION

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## **RIGHT TO REPAIR: INDUSTRY DECISIONS AND LEGISLATIVE OPTIONS**

**THURSDAY, NOVEMBER 10, 2005**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 2123 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman) presiding.

Members present: Representatives Stearns, Deal, Radanovich, Bass, Ferguson, Rogers, Myrick, Murphy, Blackburn, Barton (ex officio), Schakowsky, Towns, Rush, Green, Gonzalez, and Dingell (ex officio).

Staff present: David Cavicke, general counsel; Chris Leahy, policy coordinator; Brian McCullough, professional staff; Will Carty, professional staff; Andy Black, deputy staff director; Julie Fields, special assistant to deputy staff director, policy; Terry Lane, press secretary; Billy Harvard, clerk; Jonathan Cordone, minority counsel; and Jonathan Brater, staff assistant.

Mr. STEARNS. Good morning. The subcommittee will come to order.

As my colleagues may recall from last year's hearing, the issue of consumer access to car repair information involves complex technology. Complex methods of engaging technology including training and the shared goal of allowing Americans to take their cars to a mechanic of their choice, including getting their own hands dirty if they so choose in their own garage. I believe that all parties involved with this issue including the independent repair folks, the auto manufacturers, the parts manufacturers, the dealers, and so on all agree that access to repair and service information is a consumer right, and in fact, precluding consumer choice would be detrimental to all stakeholders.

Without choice, consumers will not buy cars that cannot be repaired conveniently and for a reasonable amount of money. Independent dealers and dealer repair operations will have fewer customers and car makes to service. And parts makers will sell fewer OEM and aftermarket parts. But even with this market based reasoning, we still hear claims that information necessary for the repair and servicing of cars is not readily available at a reasonable price.

By way of background, the increasingly computerization and complexity of automotive systems and the resulting need for more

complex information to maintain repair vehicles began with the Clean Air Act Amendments of 1990. My colleagues, that piece of legislation required for the first time the installation of onboard diagnostic or OBMD systems that monitor engine functions and malfunctions including misfires and loose fuel filler caps which could have an effect on emissions and air quality.

Like many good ideas, OBD had the simple goal of cleaner air but also had the unintended effect of adding complexity to the repair and service of vehicles because it made inaccurate information in fault codes related to the OBD computer systems integral to affected repairs. Recognizing this, the EPA now requires that the auto manufacturers through their websites provide to independent repairs shops all information necessary to repair and service these OBD systems.

A further unintended consequence of OBD is that automotive computer systems are being used increasingly to monitor functions other than those related to emissions including safety and security systems like air bags and ignition keys. Therefore, the information needed to repair and service these non-emission systems has become just as critical.

In 2002 to address this additional problem and after some legislative pressure, the auto manufacturers represented by The Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers agreed voluntarily with the Association of Automotive Service Association ASA, an organization representing independent repair technicians to share non-emissions related information necessary to repair and service vehicles via websites and utilize the National Automotive Service Task Force to resolve complaints about information access. The CARE coalition which also represents independent repair technicians and aftermarket parts retailers and manufacturers did not join that agreement in part because it felt there was no enforcement mechanism.

Now since that time, Chairman Barton, much to his credit, has attempted to achieve agreement between CARE and the automakers by continuing to refine H.R. 2048, the Motor Vehicle Owners' Right to Repair Act which was crafted in part to reflect the 2002 voluntary agreement with the addition of finding dispute resolution. In addition last summer, in order to facilitate the preferred path of a non-legislative approach to this issue, Chairman Barton and Senator Graham of South Carolina pushed the auto manufacturers and the CARE camps to pick a neutral location, a neutral arbiter, lock the doors and come up with a good faith resolution to this issue finally. Unfortunately, resolution was not reached.

It is my understanding that the following elements were substantially agreed upon to. The need for and the basic information, excuse me, the need for and the basic formulation of a third party dispute resolution process. Two as part of that process strengthening and new funding for a better financed and staffed NASTF. And three, progress on remedies for the dispute resolution framework including timeframes and procedures.

It is also my understanding that the following elements were still contentious. One, the structure and more importantly the board level of governance of the newly restructured NASTF. How issues

related to information for vehicle security systems will be addressed. Three, how to handle information that is not published and distributed to dealers, and finally how penalties should be calculated.

My colleagues, this issue at bottom is about access and information, the ability to resolve complaints quickly and with binding effect and ultimately allowing more consumer choice. I believe that the 2002 voluntary agreement, Chairman Barton's Bill and the good faith attempt at a binding agreement have all these common elements. I also hope victory can be snatched from the jaws of defeat and a non-legislative solution is ultimately reached. In my opinion, this is achievable and will eliminate a great deal of the current problems.

My objective in this hearing is to understand with precision the scope and nature of the problems, again, what constitutes acceptable resolution for both parties including legislative options, and what each party ultimately wants, non-legislative agreement or legislation. Regrettably, this is not going to be a pleasant process, too much is at stake. But I do want to say that I believe both parties have demonstrated good faith at trying to reach agreement one way or the other.

I thank the witnesses for their testimony. I also particularly would like to thank Mr. Steve Brotherton who represents the Automotive Service Association who is visiting from my home congressional district in Gainesville, Florida and I welcome him to this august committee and with that I would yield to my ranking member, Ms. Schakowsky.

[The prepared statement of Hon. Cliff Stearns follows:]

PREPARED STATEMENT OF HON. CLIFFORD STEARNS, CHAIRMAN, SUBCOMMITTEE ON  
COMMERCE, TRADE, AND CONSUMER PROTECTION

Good morning. As my colleagues may recall from last year's hearing, the issue of consumer access to car repair information involves complex technology, complex methods of engaging technology, including training, and the shared goal of allowing Americans to take their cars to a mechanic of their choice, including getting their own hands dirty in their own garage. I believe that all parties involved with this issue, including the independent repair folks, the auto manufacturers, the parts manufacturers, the dealers, and so on, all agree that access to repair and service information is a consumer right and, in fact, precluding consumer choice would be detrimental to all stakeholders. Without choice, consumers will not buy cars that can't be repaired conveniently and for a reasonable cost, independent and dealer repair operations will have fewer customers and car makes to service, and parts makers will sell fewer OEM and aftermarket parts. But even with this market-based reasoning, we still hear claims that information necessary for the repair and servicing of cars is not readily available for a reasonable price.

By way of background, the increasing computerization and complexity of automotive systems and the resulting need for more complex information to maintain and repair vehicles began with the Clean Air Act Amendments of 1990. That piece of legislation required, for the first time, the installation of On-Board Diagnostic or OBD systems that monitor engine functions and malfunctions, including misfires and loose fuel filler caps, which could have an effect on emissions and air quality. Like many good ideas, OBD had the simple goal of cleaner air, but also had the unintended effect of adding complexity to the repair and service of vehicles because it made accurate information and fault codes related to the OBD computer systems integral to effective repairs. Recognizing this, the EPA now requires that the auto manufacturers through their websites provide to independent repair shops all information necessary to repair and service these OBD systems. A further unintended consequence of OBD is that automotive computer systems are being used increasingly to monitor functions other than those related to emissions, including safety and security systems like air bags and ignition keys. Therefore, the information

needed to repair and service these non-emissions systems has become just as critical. In 2002, to address this additional problem, and after some legislative pressure, the auto manufacturers, represented by the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers, agreed voluntarily with the Association of Automotive Service Association (ASA), an organization representing independent repair technicians, to share non-emissions related information necessary to repair and service vehicles via websites and utilize the National Automotive Service Task Force (NASTF) to resolve complaints about information access. The CARE coalition, which also represents independent repair technicians and aftermarket parts retailers and manufacturers, did not join that agreement, in part, because it felt there was no enforcement mechanism.

Since that time, Chairman Barton, much to his credit, has attempted to achieve agreement between CARE and the automakers by continuing to refine HR 2048, the "Motor Vehicle Owners Right to Repair Act," which was crafted, in part, to reflect the 2002 voluntary agreement with the addition of binding dispute resolution. In addition, last summer, in order to facilitate the preferred path of a non-legislative approach to this issue, Chairman Barton and Senator Graham of South Carolina pushed the auto manufacturer and the CARE camps to pick a neutral location, a neutral arbiter, lock the doors, and come up with a good faith resolution to this issue. Unfortunately, resolution was not reached.

It is my understanding that the following elements were substantially agreed to:

- The need for and the basic formulation of a third party dispute resolution process.
- As part of that process, strengthening and new funding for a better financed and staffed NASTF.
- Progress on remedies for the dispute resolution framework, including time frames and procedures.

It also is my understanding that the following elements were still contentious:

- The structure and, more importantly, the board-level governance of the newly restructured NASTF.
- How issues related to information for vehicle security systems will be addressed.
- How to handle information that is not published and distributed to dealers.
- How penalties should be calculated.

My colleagues, this issue, at bottom, is about access and information, the ability to resolve complaints quickly and with binding effect, and ultimately allowing more consumer choice. I believe that the 2002 voluntary agreement, Chairman Barton's bill, and the good faith attempt at a binding agreement have those common elements. I also still hope victory can be snatched from the jaws of defeat and a non-legislative solution is reached. In my opinion, this is achievable and will eliminate a great many of the current problems.

My objective in this hearing is to understand with precision the scope and nature of the problems, what constitutes acceptable resolution for both parties, including legislative options, and what each party ultimately wants—non-legislative agreement or legislation. Regrettably, this is not going to a pleasant process but I do want to say that I believe both parties have demonstrated good faith at trying to reach agreement, one way or the other.

I thank the witnesses for their testimony this morning. I'd also like to thank, in particular, Mr. Steve Brotherton, representing the Automotive Service Association, who is visiting us from Gainesville, Florida, located in my home district. Thank you.

Ms. SCHAKOWSKY. Thank you, Chairman Stearns, for holding today's hearing on another important issue to consumers, whether the choice of where to take their cars for repairs is their own.

I am glad that we are revisiting the technical challenges that currently stop consumers from using the shop around the corner like my own Dack Able and that we are taking another look at the Motor Vehicle Owners' Right to Repair Act which will restore their right to choose where they want to take their business.

Technological developments in car design and maintenance have made cars safer and more environmentally sound, however, they have also created new obstacles for consumers and independent repair shops. Consumers have found that a simple repair may not be so simple after all. Even getting a diagnosis is more complicated than it was before and many have found that they cannot take their cars to the repair shop they have been using for years.



Repair shops for their part are finding that they must refer customers to dealers for work they cannot do. It is not that the mechanics at the shop are not capable but because they cannot get the information they need or they cannot get the information they need in a timely fashion to make the necessary repairs. So unfortunately, many of our neighborhood mechanics have had to send good business elsewhere.

I believe it is important to protect the trade secrets of intellectual property of auto manufacturers. The motor vehicle industry is the largest manufacturer in the country and their innovations help fuel the economy. However, I believe that information necessary to diagnose service and repair vehicles sold in the United States should be disclosed to car owners, repair shops, and the Federal Trade Commission.

I believe a balance between protecting the rights of manufacturers and the rights of consumers can be found and that H.R. 2048 is on the right track toward striking that balance. Some of the witnesses here today will report that information sharing is already occurring and that automakers and independent repair shops have been working together voluntarily. That cooperation was initiated in large part by the late Senator Paul Wellstone's prodding and is a positive change since this issue came to light a few years ago, however, there is still room for improvement.

And I was glad to hear that from January to October the stakeholders, many of them witnesses today, did try to work out an agreement on better information sharing. Despite your efforts, no accord was reached and consumers are the ones who will pay for the outstanding dispute. For me, ultimately this is about the consumer and eliminating any undue burden on him or her. If the industries involved cannot workout a solution, then I believe we do need to consider legislation. We do need to ensure that the information provided to the car owners and independent repair shops is easily accessible, accurate, timely, and not priced out of reach.

Again, I look forward to hearing your ideas on these issues. I hope that we can come to a better understanding of the impasse so that we can move forward on restoring consumer's choice when it comes to mechanics who perform work on their cars.

Thank you.

Mr. STEARNS. I thank the gentlelady.

Mr. Ferguson?

Mr. FERGUSON. Thank you, Mr. Chairman.

I appreciate you having this hearing on an issue that really faces probably all of our constituents. I have heard from many in our district in New Jersey, many of the groups are represented here today, heard from regular constituents and business people and others. Their arguments thus far have been presented in a thoughtful manner, in a reasonable manner, and I look forward to hearing more about this issue from some of our witnesses today.

And I think it is important to notice Ms. Schakowsky mentioned there are a lot of conversations going on. There are negotiations and hopefully agreements being worked out in terms of information sharing to try and address what this legislation would address. Certainly we always feel, many of us always feel that if industry in the private sector can work together to come up with solutions

to problems that exist, usually it is better than legislation. And it is certainly my hope that those negotiations and conversations can continue because generally it is certainly better when folks in the private sector can work out differences and problems rather than inviting the Government to get involved because that invariably raises other more complex issues.

In particular today, I would like to recognize and welcome a member of our second panel who is from my home State of New Jersey, Mr. Bob Everett is the owner of Bayville Auto Care in Bayville, New Jersey. He is testifying today on behalf of NFIB, the National Federation of Independent Business. He has been involved in the auto repair business since 1974, established his business in Bayville in 1986. He is the immediate past president of the Alliance of Automotive Service Providers of New Jersey.

With that, Mr. Chairman, I would yield back.

Mr. STEARNS. I thank the gentleman.

The distinguished ranking member of the full committee, Mr. Dingell is recognized.

Mr. DINGELL. Chairman, thank you, good morning.

Mr. Chairman, I am pleased we are holding this hearing today. H.R. 2048, the Motor Vehicle Owners' Right to Repair Act of 2005 was reportedly introduced to help small independent repair shops. It is unfortunate that these kinds of good intent are often accompanied by some difficulties. I have feared that the bill may impede the competitiveness of the American manufacturing industry at a precarious time for the automobile industry. While the bill represents a clear improvement over the version we considered in the last Congress, I am still afraid that this legislation may be in its current form ill-advised.

The issue, of course, Mr. Chairman is not as simple as it appears. The publicly stated objectives of the legislation are vulnerable. Consumers should be able to choose who repairs their automobiles. It is not, however, the bill's stated objectives with which I am concerned. It is the means through which the legislation seeks to achieve the stated objectives and the consequences whether intended or not that give me great reason for concern. It is possible to help consumers and to assist independent repair shops without jeopardizing the rights of automobile manufacturers and their suppliers or the competitiveness that is so important to them and to us.

Independent service stations across the Nation have joined the world's automobile manufacturers to create the National Automobile Service Task Force. This task force was designed as the non-legislative means through which the bill's stated objectives are being achieved. I am told that independent service stations are now receiving information they need to prepare all makes and all models of motor vehicles. No one should expect an undertaking of this magnitude to be perfect products inception. There will also be errors and there will always be flaws. The exercise here as in the case of other difficult problems requires communication, perseverance, and most importantly the willingness of all stakeholders to succeed and to work together for the interest of all.

Mr. Chairman, to the extent the effectiveness of this building remains in doubt, I suggest that we engage in suitable oversight to

discern the facts from their rumor and innuendo and to encourage all parties involved in the task to work together more diligently. Certainly this would be consistent with the traditions of this committee that the findings would certainly eliminate our legislative process. A thorough examination of how intellectual property and how international competitiveness may be affected or may be impaired should also be a useful exercise by the committee.

Mr. Chairman, again I thank you for holding this hearing. I appreciate your kindness in recognizing me. I look forward to hearing from our witnesses and I look forward to working with you and other interested members to bring about a perfection in the legislation that would solve of the problems upon which our people complain.

Thank you, Mr. Chairman.

Mr. STEARNS. And I thank the gentleman.

The full chairman of the Energy and Commerce Committee, Mr. Barton.

Chairman BARTON. Thank you, Mr. Chairman for holding this hearing today.

I have been involved with this issue since August of 2001 for the simple reason I think the driver of the car should decide who fixes their car. I believe that honest competition makes for better service and lower prices. It is how good businesses win customers in America and why bad businesses lose customers. Right now, there is not much competition in the repair business for automobiles.

What is at issue here is the way cars and trucks are repaired today. Computers and other sophisticated diagnostic equipment make your car more reliable than ever. But they also mean that even the best shade tree mechanic cannot fix it when something goes wrong because they do not know what it is that is going wrong. They need the sophistication of the modern diagnostic equipment to help them decide what it is that the problem—what the problem is. That is the way the manufacturers see it too. When your car breaks, they want you to come to their name brand dealerships. I understand that. If an independent garage cannot get the computer code or the other data that they need to diagnose the problem, the dealership is your only choice, when your car is under warranty that is actually the best choice. However, when the car is not under warranty sometimes maybe it is not the best choice.

Whether a car is foreign or domestic, consumers should be able to choose where they have the car repaired and whether they choose after market replacement parts or original equipment manufacturer parts. Nobody should find themselves dropping off a car at their neighborhood service station where they have done business for years and years where they have got both the mechanics and the tools necessary to fix the car only to be told that it cannot be fixed there because the mechanic cannot get the information that he or she needs from the car company. That is happening now. And the list of who gets heard goes on and on. The consumer who cannot get their car fixed, the shop owner who loses business, the mechanic who loses his job, even the company that makes the tools for the shops that cannot use them.

I wish the industry parties could sort this out but they seem absolutely incapable of doing so. The market players that achieve vol-

untary agreements always do a better job than politicians or bureaucrats. I was pleased that the participants working toward this agreement actually made some progress during August and September. I was less than pleased, however, to see that after years and years of discussion they still could not come to a final resolution. My understanding of those meetings leads me to believe that the parties will not reach an agreement soon and maybe not ever. I am tempted and I am reminded of the ongoing negotiations between the Palestinians and the Israelis. There may be good intentions on both sides but they never seem to get the final resolution. So here we are in this subcommittee today having to do it for them. I do not doubt the good faith of the parties involved but the fact remains that they cannot agree.

I appreciate the efforts of automakers especially United States automakers who have worked very hard to improve the NASTF process to get information to independent repairers. But efforts without solutions do not fix broken cars. I have introduced legislation in previous Congresses to address this important issue that affects consumers and small businesses. This Congress has redrafted a legislation to address legitimate concerns raised by the industry and the Federal Trade Commission. H.R. 2048, the Motor Vehicle Owners' Right to Repair Act which I have introduced along with Congressman Towns and Congressman Issa which now has over 66 cosponsors including many on this subcommittee. The AAA, the NFIB, the Consumer Electronics Association, the Retail Industry Leaders Association, and the Sixty Plus Senior Citizens Coalition all support this legislation.

My goal is and always has been to put the vehicle owner in the driver's seat when it comes to choosing where to have their car repaired. It is not about getting any proprietary information and this legislation explicitly protects the trade secrets of the manufacturers. In fact, automakers currently comply with an EPA rule today that specifically protects trade secrets when shop work and emission systems is being done. This framework should also work for non-emissions repair work. My bill simply requires that manufacturers make the same information available to both dealers and independent shop owners.

We all know how dependent we are on our cars. They take us to work, they take us to school, they take us to Congress, they take us to the grocery store, they take us to our relative's house to visit on Sunday. If your car does not work, your life does not work. You want it fixed and you want it in your driveway where it is available for your use. There is a good chance that the person who fixes my car works at a service station or a small garage, maybe even owns their own operation, not a big car dealership. And again, I am not opposed to big car dealerships; they are some of my very best supporters. Why shouldn't I, the owner of the car, be able to decide which of my many folks who can work on a car that I can go to the person that I choose not to the dealership because they are the only one that has the diagnostic equipment.

Independent shops who have paid for access to information, who have paid for the diagnostic equipment, who have made the investment in tools to repair the car, have a right to be able to use that and get a timely response when a customer comes into their shop

and wants to know what is wrong with their car and how much it is going to cost to get it fixed. They need some recourse when the manufacturer for whatever reason simply will not give them the information or allow them the access to the codes and things of this sort.

Presently, independent repairs who repair the vehicle are forced to turn their customers away to the dealerships. I know that constituents all over the country deserve better than this. If an enforceable voluntary agreement can be reached, great. But if not, I think it is time to ask Chairman Stearns, Ranking Member Schakowsky to move H.R. 2048 and move it sooner rather than later. Four years is long enough. It is now time to take legislative action and move this process forward.

With that, Mr. Chairman, I thank you for your willingness to hold your hearing, Mrs. Schakowsky for the willingness to be a part of it. I look forward to hearing from the witnesses.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, CHAIRMAN, COMMITTEE ON ENERGY  
AND COMMERCE

I want to thank Chairman Stearns for holding this important hearing today.

I have been involved with this issue since August of 2001, because I believe that drivers should decide who fixes their cars. I also believe that honest competition makes for better service and lower prices. That's how good businesses win customers in America, and why bad businesses lose them. Right now there's not much competition, and it shows.

What's at issue here is the way cars and trucks are repaired today. Computers and other sophisticated equipment make your car more reliable than ever, but they also mean that even a genius shade-tree mechanic can't fix it when something goes wrong. The sophistication needed to repair modern vehicles makes car repair a little like rocket science.

That's the way manufacturers see it, too. When your car breaks, they want you to come to their brand-name dealerships. And if independent garages can't get the computer codes and other data they need to diagnose the problem, the dealership is your only choice.

Whether a car is foreign or domestic, consumers should be able to choose where they have the vehicle repaired, and whether they choose after-market replacement parts or Original Equipment Manufacturer parts. Nobody should find themselves dropping off a car at a neighborhood service station, where they've got both the mechanics and the tools necessary to fix that car, only to be told that it can't be fixed because the mechanic cannot get information from the car company. That's what happens now, and the list of who it hurts goes on and on—the consumer who can't get his car fixed, the shop owner who loses business, the mechanic without a job to do, even the company that makes tools for shops that can't use them. I'd be happy to let the industry parties sort this out, but they seem incapable. Market players that achieve voluntary agreements always do a better job than politicians or bureaucrats. So I was pleased to see the participants working toward an agreement during August and September. I was less happy to see that after years of discussion, they still can't find a way to agree. My understanding of the meetings leads me to believe the parties will not reach agreement soon, and maybe not ever. So here we are, doing it for them.

I do not doubt the good faith efforts of all parties involved, but the fact remains that they cannot agree. I appreciate the efforts the automakers have made to use and improve the NASTF process to get information to independent repairers. But efforts without solutions don't fix broken cars.

I introduced legislation in the previous Congress to address this important issue that affects consumers and small business. This Congress I redrafted the legislation to address legitimate concerns raised by industry and the FTC. I have sponsored H.R. 2048, the "Motor Vehicle Owners' Right to Repair Act," which I introduced along with Congressman Towns and Congressman Issa and which now has 66 co-sponsors, including many on this Subcommittee. The AAA, NFIB, The Consumer Electronics Association, The Retail Industry Leaders Association, and the 60 Plus

Senior Citizens support this legislation. I am pleased to see we will hear from some of them today.

My goal is and has always been to put vehicle owners in the driver's seat when it comes to choosing where to have their car repaired. It is not about gaining proprietary information, and so my legislation explicitly preserves trade secrets. In fact, automakers currently comply with an EPA rule that specifically protects trade secrets when shops work on emissions systems. This same framework should work for non-emissions repair information too and my bill simply requires that manufacturers make the same information available to both dealers and independent shops.

We all know how dependent we are on our cars. They take us to work and back, to school, to the grocery store, to grandma's house for dinner on Sunday. When my car doesn't work, I need it fixed and back in my driveway as soon as possible. So do most people.

There's a good chance that the guy who will fix my car works at a service station or a little garage, not at a big car dealership. Why shouldn't I be able to go to him, and why shouldn't he be able to repair my car? Independent shops who have paid for access to information from manufacturers and have made the investment in tools to repair the car need a timely response when the information cannot be accessed. They need some recourse when there are problems such as this. Presently, independent repairers who could have repaired the vehicle are forced to turn their customers away to the dealerships. I know my constituents deserve better than the status quo. If an enforceable voluntary agreement can be reached before we act, great. But I don't think American consumers should wait any longer. I have asked Chairman Stearns to be ready to markup H.R. 2048 or an alternative very soon, probably in December.

I've been at this for four years now. It can take years to pass a law, and that's usually a good thing, but it shouldn't take years to get your car fixed.

Thank you.

Mr. STEARNS. And I thank you for your leadership, Mr. Chairman.

Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman and ranking member for bringing this hearing today.

First of all, I need to tell you at first when this issue came up back home I met with my repair and parts people, their association to try to get an idea of the extent or degree of the problem. And believe it or not, there was even disagreement among members of the association as to the extent of it. And what I asked for at that time was give me real life examples of where you have been stymied and frustrated in gaining the necessary information to make the necessary repairs. And I really never received one yet I see out in the audience today many individuals in the repair business that I think would be willing to get me out there in the hall and tell me specifics that they—experiences that they have had.

But the real problem I think comes trying to define what this issue is really about. At first, I thought it was about information, getting information so you—the diagnostics and such. But then it was a debate about well we have to purchase expensive equipment because of what the manufacturers are doing. I am not real sure what we can do about that. And then the last thing was well it really is about parts and in replacement parts and why we have to use certain parts.

And as we go through this debate though, I think everyone needs to understand there are certain guiding principles, legal in nature that we will always have to defer to that are bigger than this bill, bigger than any industry or individual or occupation. And some of these things may touch on proprietary rights. And these are all very serious issues because we can pass all sorts of laws here but

whether they can be challenged in the courts and we create greater problems. That is the last thing that we want to do here.

It costs more to operate a motor vehicle today than ever before just because of what it takes in the way of fuel. And this committee specifically has attempted to do something about it and we have not been that successful. The last thing we need is to add an additional burden to the American consumer of costing them a lot more to maintain their vehicles. So hopefully in good faith we will approach this issue and really find the degree and the nature of the problem and address it. Again, as specifically as we can again keeping in line with the guiding principles that should guide us in all propositions of law and that is we do have the rights of individuals across the board to be considered.

Again, I thank the chairman and I would yield back the balance of my time.

Mr. STEARNS. I thank the gentleman.

Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman.

I welcome this panel today because it helps set some knowledge on important information, an important issue for us. The one side holds that manufacturers to invest—

Mr. STEARNS. Recess, it is just a recess in the House so go ahead. Excuse me.

Mr. MURPHY. Thank you.

With the manufacturer to invest heavily in the invention and building of automobile parts and automobiles themselves and saying they should not be forced to automatically give up their proprietary inventiveness and the other side saying that consumers should have options and not to constrain by monopolies and help lower prices.

The average car has 17 different computer systems that control brakes, ignition, steering, air bag safety features, et cetera. Many of us grew up still feeling that we could work on some cars like we had when we were teenagers. Now we lift the hood, take a look at it, and close it back down because there is not much any of us can go do anymore on these cars. We understand that they are appreciably more complex and require high technology both to analyze anything going wrong with the car and also to repair it.

I am pleased that our Chairman, Mr. Barton has introduced H.R. 2048 in order to even the market's playing field and work up some solutions. As my colleagues know, the bill requires that the same services, training information, and tools available to their franchise dealership are also made available to independent repair mechanics. Through this process, I think all of us intend to protect consumer interest, promote the free market, but we also need to simultaneously protect manufacturer's rights.

So I am looking forward to hearing more in this particular hearing and hearing both sides of the issue and hope that we can come up with a legislative solution to sharpen this bill that will really benefit both sides fairly but ultimately to benefit the consumer above all.

I thank the chairman for holding this hearing and I yield back the balance of my time.

Mr. STEARNS. I thank the gentleman.

Mr. Towns?

Mr. TOWNS. Thank you very much, Mr. Chairman. Let me thank you and also Ranking Member Schakowsky for having this hearing today. I think it is important that we begin to have a serious dialog.

As motor vehicles have become more complex, the servicing of them has also become a high technology business requiring skilled trained technicians and a sizable investment in diagnostic and repair equipment. For independent repairers to be successful, they need to have access to up to date training and specialized tools, as well as, service and repair information.

I became an original cosponsor of this legislation because I wanted to ensure that the advanced computer technologists that are making vehicles safely and cleaner do not result in locking out car owners and independent repairers from being able to repair and maintain vehicles. Independent repair shops perform between 70 and 80 percent of most warranty and repair work. If later model automobiles can only be serviced and repaired at automobile dealerships, then the ability of consumers to shop around for the best price and most convenient service location would be greatly limited.

In addition, I fear that this may result in many small businesses being crippled by their inability to compete with franchise dealerships. I have monitored this issue for the past 4 years and I am pleased with how much information has become available to independent repairers. Since the manufacturers agreed to provide the same information to the aftermarket that they provide for their dealers, the amount of information available on their website has increased greatly. And while I am sure that some gaps still exist, I am hopeful that manufacturers will continue to refine their website and increase their access.

Additionally, Mr. Chairman, I am aware that there have been negotiations between the members of the Care Coalition and the automobile manufacturers to resolve an outstanding issue. Agreement has reached on many of these core issues during these negotiations that are facilitated by the Better Business Bureau. However, at the end of these discussions, it is my understanding that CARE required 50 percent control over the board of the National Automotive Service Task Force. Due to CARE's requirement, the negotiation fell apart. I was disappointed at this outcome and encouraged both sides to consider options to continue to explore a non-legislative solution if possible. You do not want the Government to get its nose under your tent. Please go back to the conference table and try again.

I applaud both sides for their commitment to provide consumers with a valuable service and am confident that working together you can resolve this issue without the need of legislation. That is my hope. That is my prayer. I look forward today from hearing from the witnesses. And again, Mr. Chairman, I would like to thank you and the ranking member for moving forward with this hearing because I think this dialog needs to take place and I think it needs to take place now.

Thank you very much and I yield back the balance of my time.

Mr. STEARNS. I thank my colleague.

Mr. Bass?



Mr. BASS. Thank you, Mr. Chairman. I will be very brief.

It is a good hearing and important topic. We need to have diversity in repair facilities. We need to protect manufacturers. We need to continue the negotiations that as my friend from New York has said, are not progressing as they should. I hope that can come—we can begin that process again. This is an important issue that needs to be resolved and I yield back.

Mr. STEARNS. The gentleman yields back.

Any one else seek opening statement recognition? If not, we will go to the first panel.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF WYOMING

Thank you, Mr. Chairman.

I'd like to begin by thanking Chairman Stearns for scheduling today's hearing on the availability of auto repair information. It is especially timely given the recent negotiations between auto manufacturers and the aftermarket industry.

With rapidly advancing computer technology, auto systems and the task of repairing vehicles has become more complex. As such, the service information developed by manufacturers is necessary not only for franchised dealers, but also the independent service providers who work on over 70 percent of cars not under warranty.

In order to ensure the availability of this information, in 2000 the auto industry established the voluntary National Automobile Service Task Force. Although the Task Force has operated for over five years now, members of the aftermarket industry still maintain they do not have affordable access to the information needed to compete in today's marketplace.

I hope that today's panels will shed light on what industry has not, to this point, been able to agree upon. Issues include proposed structural changes to the Task Force, mechanisms for dispute resolution and enforcement, and vehicle security issues—just to name a few.

Industry self-regulation is certainly the preferable solution in cases like these. By taking legislative action we run the risk of disrupting important market forces, which in some cases does more to impede healthy competition than to foster it. In lieu of a voluntary industry solution, however, as the committee of jurisdiction over consumer protection we have an obligation to explore legislative options.

I thank our panels for joining us today and yield back the balance of my time.

PREPARED STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF WISCONSIN

Thank you Mr. Chairman. I am very pleased that we are having this hearing today.

I was raised to be frugal and careful with money and I was taught that fixing and reusing things has value. Over the years, I have purchased several used cars that have eventually had repair and maintenance needs. My 1994 Chrysler LeBaron which I use when I am at home in Wisconsin will soon see the inside of a repair shop. Fortunately, because it is a 1994 model, I have a choice of repair options.

My LeBaron may take its final journey to the junkyard soon, and if I then purchase a new car loaded with the latest technologies, my repair options could be much more limited due to computer-controlled technologies in both core and ancillary systems. My local mechanic (with whom my LeBaron and I now have a close relationship) runs a small independent local business—Monona Motors. Of course, I hope my hypothetical new car would be repair free for many years, but if it weren't and the warranty expired, I want to be able to continue my relationship with the good folks at Monona Motors. And I would like my constituents to be able to choose where they go to repair their car. Competition and choice are the pillars of a strong market economy.

I am pleased that the various stakeholders have been willing to sit down at the table to try to come to an agreement that will ensure that independent repair shops and others have access to the information they need to competently service automobiles. I am disappointed that so far a comprehensive agreement remains out of reach.

Although I am a cosponsor of Chairman Barton's Right to Repair legislation, I do understand the very real concerns regarding intellectual property and safety. It is my hope that we can find ways to address these concerns while moving forward with either a comprehensive voluntary agreement or legislation.

Mr. STEARNS. Let me welcome James Kohm, Associated Director Bureau of Consumer Protection, Division of Marketing Practices of the Federal Trade Commission; Mr. Steven Cole, President and CEO of Council of Better Business Bureaus; and Mr. David Parde, President, Coalition for Auto Repair Equality; and Mr. Michael Stanton, Vice President, Government and International Affairs, The Alliance of Automobile Manufacturers.

Mr. Kohm, we will start with you with your opening statement and just pull the mike close to you and turn it on. Do you know how to turn it on right there? There you go, good.

Thank you, welcome.

**STATEMENTS OF JAMES A. KOHM, ASSOCIATE DIRECTOR BUREAU OF CONSUMER PROTECTION, DIVISION OF MARKETING PRACTICES, FEDERAL TRADE COMMISSION; STEVEN J. COLE, PRESIDENT AND CEO, COUNCIL OF BETTER BUSINESS BUREAUS, INC.; DAVID PARDE, PRESIDENT, COALITION FOR AUTO REPAIR EQUALITY; AND MICHAEL J. STANTON, VICE PRESIDENT, GOVERNMENT AND INTERNATIONAL AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS**

Mr. KOHM. Thank you, Mr. Chairman and members of the subcommittee.

I am James Kohm, the Associated Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection. I am pleased to have this opportunity to discuss our participation in the meetings between automotive manufacturers and independent repair shops this past summer. The written testimony submitted today is that of the Federal Trade Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the opinion of any particular commission or the commission as a whole.

Let me begin by thanking this subcommittee for the opportunity to work with you to resolve the issues before us today. Last July at the direction of Chairman Barton and Senator Graham, representatives of the automotive manufacturers and independent repair shops met for more than 60 hours to try and reach a voluntarily agreement on how to make information, training, and tools available to automotive service professionals. At least one commission staff member attended all of these meetings. Both sides worked diligently to try to fashion an appropriate mechanism to address those instances where the information sharing system had failed. The parties looked to the NASTF information sharing structure already in place as a model. Despite these diligent efforts on both sides, an agreement could not be reached and on September 30, 2005, the parties concluded negotiations.

Although the commission is disappointed with the results of these talks, we continue to believe that in the long run a voluntary self-regulatory approach is the best solution to the concerns that have been raised. However, if you determine that legislation is appropriate, we believe that industry participants are best situated to

resolve particular disputes and, therefore, any legislation should build upon the progress the parties made in negotiations this summer.

In conclusion, I would like to thank the subcommittee for focusing attention on this important consumer protection issue and for giving the Federal Trade Commission the opportunity to discuss its role. We look forward to continuing to work with the subcommittee and I would be happy to answer any questions that you have.

[The prepared statement of James A. Kohm follows:]

PREPARED STATEMENT OF JAMES A. KOHM, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. Chairman and members of the Subcommittee, I am James A. Kohm, Associate Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection.<sup>1</sup> I appreciate this opportunity to discuss the Commission's mission and the discussions between representatives of the automotive manufacturers and representatives of independent auto repair facilities.

The Federal Trade Commission ("FTC" or "Commission") is a small agency with a big mission: to enhance consumer welfare and protect competition in broad sectors of the economy. The FTC enforces the Federal Trade Commission Act<sup>2</sup> and other laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also promotes informed consumer choice and public understanding of the competitive process.

In addition to the FTC Act, the agency has responsibilities under more than fifty federal laws, including, most recently, the Controlling the Assault of Non-Solicited Pornography and Marketing Act,<sup>3</sup> the Fairness to Contact Lens Consumers Act,<sup>4</sup> and the Fair and Accurate Credit Transactions Act.<sup>5</sup> The Commission's work is critical to protect and strengthen free and fair markets in the United States and, increasingly, the world. Among the Commission's accomplishments are the implementation and enforcement of the National Do-Not-Call Registry, the protection of the availability of lower-cost prescription drugs, stopping deceptive or abusive lending practices, attacking unfair or deceptive practices in e-commerce, and the review of corporate mergers reported to the antitrust agencies under the Hart-Scott-Rodino premerger notification process.

Auto repair is undoubtedly an important issue for U.S. consumers. U.S. consumers spend more than \$80 billion annually to repair and maintain the two hundred million cars currently on the road.<sup>6</sup> Consumers thus have a significant interest in automobile repair and maintenance markets that operate properly and efficiently, consistent with safety and other quality standards.

For some time, members of this Committee—and especially Chairman Barton—have considered ways to ensure that independent car repair facilities and vehicle owners have access to information and tools needed to diagnose, service, or repair vehicles.

Such access is not as easy or relatively inexpensive as it once was. For example, the sophisticated technology used in most cars today can require expensive computerized diagnostic tools to diagnose problems, as well as knowledge of particular software access or computer codes. It can be difficult for one independent repair shop to acquire all of the equipment it may need to repair all makes of cars, or to easily access all of the information required to make timely repairs. Generally, the marketplace will provide strong incentives for automobile manufacturers to ensure their customers have an appropriate range of repair options because the manufacturers depend on repeat purchases of their product. With the increasing sophistication of automobiles, however, independent repair shops have been concerned about continued access to high tech information and tools.

<sup>1</sup> This written statement presents the views of the Federal Trade Commission. Responses to questions reflect my views and do not necessarily reflect the views of the Commission or any Commissioner.

<sup>2</sup> 15 U.S.C. § 45(a).

<sup>3</sup> 15 U.S.C. § 7701 and implementing regulations.

<sup>4</sup> 15 U.S.C. § 7601 and implementing regulations.

<sup>5</sup> Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003), codified at 15 U.S.C. § 1681 *et seq.*

<sup>6</sup> U.S. Census Bureau, Statistical Abstract of the U.S. (2004-2005).

To address these issues, market participants have taken some initial steps that provide a foundation upon which to build an effective self-regulatory mechanism. For example, a group of automotive trade associations has created an information-sharing structure, the National Automotive Service Task Force ("NASTF"), to aid in the provision of timely service information needed by independent repair facilities. In addition, third-party information providers, such as ALLDATA and Mitchell, can provide useful services to automobile repair facilities. The amount of auto repair data available is voluminous and not always easily accessible. By packaging data for sale, third-party information providers can allow repair facilities to access necessary technical information with the speed the marketplace demands.

More recently, legislation has been proposed to address the provision of information to the aftermarket, that involves relations among automobile manufacturers, franchised dealers, independent repair shops, tool manufacturers and sellers, and—most importantly—consumers.

#### A VOLUNTARY INDUSTRY SOLUTION

Chairman Barton and Senator Graham urged representatives of the independent auto repair facilities and automotive manufacturers to try to reach a voluntary agreement for the provision of service information. In response, the parties, with the Commission staff's assistance, chose Steven J. Cole of the Council of Better Business Bureaus ("CBBB") as the facilitator. Participants included the Coalition of Auto Repair Equality ("CARE") and the Automotive Aftermarket Industry Association ("AAIA"), the Alliance of Automobile Manufacturers ("AAM"), the Association of International Automobile Manufacturers ("AIAM"), the National Automobile Dealers Association ("NADA") and the Automotive Service Association ("ASA"). FTC staff attended all the meetings. The parties began discussions on July 26, 2005 with an expectation that the facilitation would conclude September 1, 2005. Because of the progress the parties made, that deadline subsequently was extended to September 30, 2005.

Throughout August and September, the parties, the CBBB, and Commission staff met for more than sixty hours to try to reach an agreement on what information the auto manufacturers would provide to independent auto repair facilities and how they could provide that information in an efficient and affordable manner. In addition, the parties spent considerable time discussing an appropriate mechanism to address those instances where the system failed. In formulating a plan, the parties looked to the information-sharing structure created by NASTF to provide information, training, and tools to automotive service professionals. In the course of their discussions at the CBBB, both sides looked to improve the NASTF structure to streamline the process and provide the necessary support to technicians who face problems obtaining information.

Despite hard work by both sides, the parties were unable to come to an agreement and, on September 30, 2005, concluded negotiations without a solution.

The parties continued to have difficulties in reaching agreement regarding such issues as the precise scope of information to be shared, access to diagnostic tools, and the breadth of industry interests that should be represented in the conflict-resolution organization. The Commission is disappointed that the facilitation process was unsuccessful. Nonetheless, the parties' efforts to reach agreement were significant and should receive consideration throughout the ongoing legislative process in which this Committee is engaged.

Although the parties have failed to reach agreement, the parties' work thus far could provide the basis for a solution to this issue. The Commission continues to believe that, in the long run, a voluntary, self-regulatory approach is the best solution to the concerns that have been raised. If the Congress determines, however, that legislation is appropriate, the Commission believes it is important that the resolution of particular disputes be decided and implemented by industry participants rather than the government. Further, any governmental intervention in this area requires great care to avoid unnecessary impact on existing markets. The Commission is concerned that a mandatory, uniform approach could result in higher costs for consumers and leave the industry less flexible to address a rapidly changing marketplace.

Mr. Chairman, members of the Subcommittee, thank you for providing the Federal Trade Commission the opportunity to appear before this Subcommittee. We look forward to working with you.

Mr. STEARNS. Thank you, Mr. Kohm.

Mr. KOHM. Thank you.

Mr. STEARNS. Mr. Cole?

**STATEMENT OF STEVEN J. COLE**

Mr. COLE. Good morning, Mr. Chairman and members of the subcommittee.

I am the guy who locked the doors, served lunch, and tried to get a deal. So I wish I was telling you something different this morning than I am.

Just by way of introduction, the Council of Better Business Bureaus is the umbrella organization for all the Better Business Bureaus across the United States and Canada with 375,000 members.

In July, we were asked by the Federal Trade Commission with the support of representatives of both the auto manufacturers and the auto repair industry to serve as a facilitator to try to reach an agreement in the design of the third party dispute resolution process to resolve the issues of diagnosis and repair and service information. I want to say that at the beginning of the process, the original parties, The Alliance of Automobile Manufacturers and the Coalition for Auto Repair Equality agreed to a set of ground rules for the facilitation and further agreed to grant the facilitator, me, the authority to make decisions regarding participation and the process and other procedural issues.

One early decision I made was to allow additional groups to be represented as named parties in the facilitation, the Automotive Aftermarket Industry Association, the Association of International Automobile Manufacturers, NADA, and the Automotive Services Association. I mention that because the fact that the issue of who could sit at the table was a difficult one requiring my decision and was not the result of consensus revealed much about the difficulties of the task ahead. A trust between the parties was not at the beginning of process a readily available commodity. The truth is I am not convinced in the end we had all the needed parties for the facilitation. Tool manufacturers were not there, independent information providers might have been helpful and this is something to bear in mind for the future.

The group held 10 meetings from its initial session on August 3 to its final meeting on September 30. Each session lasted between 4 and 6 hours. And I need to say there was considerable preparation in advance and work by the parties in between each of these meetings.

At any facilitation or mediation which is how we approach this task, the parties trust in the impartiality of the neutrals and the attendant confidentiality of process is a vital role in the ultimate success or failure. So I will be constrained as to the level of detail I may be able to share with you this morning.

As you know, the parties were not able to reach an agreement on the full scope of a self regulatory program. This was not for one of trying on the part of all the participants. I do have some experience in doing this and I believe that each party and the experts they brought with them approached this facilitation in good faith. Their comportment throughout the process only enhanced my opinion of their commitment. In point of fact, the parties quickly reached agreement on the utility of and the basic nature of a third party dispute resolution process which was my initial understanding of the purpose of the facilitation in the first place.

There was not a shared understanding of the scope of the problem to be solved but notwithstanding that the parties did agree that a progress was possible. They all appeared to recognize that a third party dispute resolution process by itself would not provide an adequate solution unless improvement was made in the two steps that would necessarily precede a formal third party process. Nearly all the work of the group was focused on either the first step, how the manufacturers respond to an initial request for assistance from repair facilities or the second step, an expedited fact finding which was decided would be conducted by a restructured and better funded process through the National Automotive Service Task Force, NASTF.

I am convinced that a third party dispute resolution process can work and can be agreed to by the parties once the issues related to these first two steps are resolved. As the chairman noted, there was tentative substantial agreement on a huge number of issues that we dealt with.

The process ultimately was not able to reach resolution on important but a smaller number of issues. First, how should NASF be restructured and governed to ensure that all interests were represented in a balance manner? How tool related issues should be handled both by NASTF and by the third party mechanism? And had an agreement been reached, it was the party's intention to defer these questions to the newly structured NASTF board which raised the stakes for the governance issue I just mentioned and Mr. Towns had mentioned in his opening statement. How or whether possible issues of the cost of the tools will be handled by NASTF and the third party if it were alleged that the price of the tool was so high in relation to the rest of the market that the price made the tool unavailable as a practical matter.

Fourth, a mutual acceptable method to deal with vehicles relating to vehicle security. How to provide the aftermarket industry with the practical ability to obtain necessary information and codes to complete repairs without compromising a consumer's security. It seems that only one or a few of the auto manufacturers are unable to reach agreement on a methodology but that prevented agreement on this issue.

Fifth, the extent to which a manufacturer supplied information through telephone hotlines should be required to be made available to independent repair facilities when it is not published in writing and sent routinely to all franchise dealers although it is made available to dealers on an as needed basis.

And finally, should there be monetary remedies in the third party dispute resolution process and if so how should they be calculated and what penalty if any should be assessed if a manufacturer failed to comply with a mechanism decision.

On behalf of the BBB system, I want to thank the committee for your attention and especially if you are understanding that industry self regulation cannot occupy an important place in the marketplace today and that informal dispute resolution processes can very effectively compliment the legislative process.

I would be happy to answer questions, thank you.

[The prepared statement of Steven J. Cole follows:]

PREPARED STATEMENT OF STEVEN J. COLE, PRESIDENT AND CHIEF EXECUTIVE  
OFFICER, COUNCIL OF BETTER BUSINESS BUREAUS, INC.

Mr. Chairman and members of the Sub-Committee, my name is Steven J. Cole, and I am the President and Chief Executive Officer of the Council of Better Business Bureaus, Inc.

The Council of Better Business Bureaus (CBBB) is the umbrella organization for the nation's Better Business Bureau system, which consists of 177 local BBB's and branches and 375,000 member businesses across the United States and Canada. The CBBB is a nonprofit business membership organization tax exempt under section 501(c)(6) of the Internal Revenue Code. More than 275 leading edge companies nationwide belong to the CBBB and provide support for its mission of promoting ethical business practices through voluntary self-regulation and consumer and business education.

In 2004, the Better Business Bureau system provided nearly sixty million instances of services—reliability reports, complaint processing, educational information and referrals. The CBBB has significant experience with—and tailored programs serving—the automotive industry. Thousands of auto dealers and independent repair facilities are members of local Better Business Bureaus across the United States, and as such meet BBB standards for ethical business practices and advertising. During 2004, nearly 2.4 million consumers contacted the BBB on the Internet or by telephone to obtain BBB reports on auto-related products and services from members and non-members alike. At the same time, the BBB system handled more than 72,000 individual consumer complaints involving the automotive industry. In addition, the CBBB provides warranty dispute resolution services for more than 30 auto manufacturer brands, serving an additional 28,000 consumers with conciliation, mediation and arbitration services.

In July of this year, I was asked by the Federal Trade Commission, with the support of representatives of both the auto manufacturers and the auto repair industry, to serve as a facilitator in an effort to assist the various groups in designing a third-party dispute resolution process to resolve issues concerning the provision by auto manufacturers of diagnostic, repair and service information to vehicle owners and repair facilities.

The process was tasked with very challenging time constraints. It was expected that the CBBB would make a report to the Federal Trade Commission not later than September 1st on the outcome of the facilitation effort.

At the beginning of the process, the original parties—the Alliance of Automobile Manufacturers (AAM) and the Coalition for Auto Repair Equality (CARE)—agreed to a set of ground rules for the facilitation and further agreed to grant the facilitator the authority to make decisions regarding participation in the process and other procedural issues. One early decision I made was to allow additional groups to be represented as named parties in the facilitation. Those groups were: the Automotive Aftermarket Industry Association (AAIA), the Association of International Automobile Manufacturers (AIAM), the National Automobile Dealers Association (NADA) and the Automotive Service Association (ASA). The fact that the issue of who could sit at the table was a difficult one requiring my decision, and was not the result of consensus, revealed much about the difficulties of the task ahead. Trust between the parties was not a readily available commodity. Other individuals joined the facilitation at various points to bring expertise or other assistance to the process, and one or more observers from the Federal Trade Commission attended each formal session.

The group held 10 meetings from its initial session on August 3rd through its final meeting on September 30th. Each session lasted between four and six hours, with considerable preparation work by the parties between each session. CBBB provided formal progress reports to the Federal Trade Commission in letters on September 1st, September 14th and October 3rd.

In any facilitation or mediation, the parties trust in the impartiality of the neutrals—and the attendant confidentiality of the process—plays a vital role in the ultimate success or failure of the facilitation. I am therefore constrained as to the level of detail I believe I can share with you this morning. I will, however, endeavor to provide the Sub-Committee with a flavor of the major issues with which the parties were grappling.

As you undoubtedly know, the parties were not able to reach agreement on the full scope of a self-regulatory program. I should note, however, that this was not for want of trying on the part of all the participants. I believe that each party—and their respective experts—approached this facilitation in good faith. Their comportment throughout the process only enhanced my opinion of their commitment.

In point of fact, the parties rather quickly reached agreement on the need for—and basic nature of—a third-party dispute resolution process, which was my initial understanding of the purpose of the facilitation. However, the parties all appeared to recognize that a third-party dispute resolution process by itself would not provide an adequate solution unless improvement was made in the two steps that would necessarily precede a formal third party process. Nearly all the work of the group was focused on either the first step (how the manufacturers respond to initial requests for assistance from repair facilities) or the second step (an expedited “fact-finding” which, it was decided, would be conducted by a restructured and better-funded process through the National Automotive Service Task Force—NASTF). I am convinced that a third-party dispute resolution process can work and can be agreed to by the parties once the issues relating to these first two steps are resolved.

As my October 3rd letter to the Federal Trade Commission indicated, the process ultimately was not able to reach resolution of the following issues:

- How should NASTF be restructured and governed to ensure that all interests were represented in a balanced manner;
- How tool-related issues should be handled, both by NASTF and by the third-party mechanism (had an agreement been reached, it was the parties’ intention to defer these questions to the newly-restructured NASTF board, raising the stakes for the governance issue just mentioned);
- How or whether possible issues of the cost of a tool would be handled by NASTF and the third-party if it were to be alleged that the price of the tool was so high in relation to the rest of the market that the price made the tool “unavailable” as a practical matter;
- A mutually acceptable method to deal with issues relating to vehicle security (how to provide the aftermarket industry with the practical ability to obtain necessary information and codes to complete repairs without compromising the consumer’s security). It seems that only one or a few of the auto manufacturers were unable to reach agreement on a methodology);
- The extent to which manufacturer supplied information through telephone hot-lines should be required to be made available to independent repair facilities when it is not published in writing and sent routinely to all franchised dealers, although it is made available to dealers on an as needed basis; and
- Should there be monetary remedies in the third party dispute resolution process, and if so, how should they be calculated, and what penalty, if any, should be assessed if a manufacturer failed to comply with a mechanism decision.

On behalf of the Better Business Bureau system, I want to thank the Committee for your attention and for your understanding that industry self-regulation can occupy an important place in the 21st century marketplace and that informal dispute resolution processes can very effectively compliment the legislative process.

I am available to answer any questions you may have.

Mr. STEARNS. Thank you, Mr. Cole.

Mr. Parde?

#### **STATEMENT OF DAVID PARDE**

Mr. PARDE. Thank you, Mr. Chairman.

I am David Parde, President of the Coalition for Auto Repair Equality or CARE. CARE appreciates the opportunity to appear before you today to discuss H.R. 2048, as well as, CARE’s discussions with the Automobile Industry Association regarding the self regulatory program.

CARE’s members operate businesses at 34,280 locations throughout the United States. Of these, 15,270 are automobile maintenance and/or repair facilities where consumers bring their cars to be worked on by technicians. Our members include repair shops such as Midas and Jiffy Lube and companies that sell replacement parts to “do it yourselves,” independent repair shops that include Advance Auto Parts, O-Reilly Auto Parts, Auto Zone, CSK, CAR QUEST, and NAPA all companies that sell parts through retail stores, wholesale distribution, and also provide repair services through individually owned shops. In addition, CARE has



partnered with the coalition of 49 business groups and associations in support of right to repair.

As you are aware, CARE representatives together with Aaron Lowe of the Automotive Aftermarket Industry Association and Bob Everett of the Alliance of Automotive Service Providers met with representatives from the Alliance AIAM, ASA, and NADA, and participated in a series of meetings over 2 months this summer. With the Better Business Bureau as our facilitator and the FTC staff as observers, we reviewed and discussed numerous proposals for a self regulatory program designed to resolve issues or problems relating to the availability to the aftermarket of automotive diagnostic and repair information, tools, and capabilities.

In addition to the meetings facilitated by the BBB, we held two meetings on our own. We twice agreed to extend our imposed deadlines and exchange numerous communications. We did make progress toward a workable solution. Most notably for us, the Alliance and AIM agreed that any program contain an enforcement component which had proved to be a roadblock in previous discussion among the parties. Despite what we believe were good faith efforts, we simply could not agree on certain fundamental elements that CARE believes are essential for such a program to be successful.

The program under discussion with the industry associations would have required automobile manufacturers to commit in writing to abide by a set of voluntary standards for making information and tools available to the aftermarket in a similar manner and to the same extent as such information is made available to the dealerships. The standards also set out a process to enforce the commitment made by each company. Under the program, technicians seeking information or tools to repair a vehicle but were unable to locate the necessary information would first be required to contact a representative of NASTF to obtain assistance. The parties had agreed that NASTF would be reconstituted and employ trained service technicians and staff who would act as a buffer between the technician and the manufacturer to determine if the information was available and if not to make a recommendation about whether it should be made available.

In the event the necessary information was not provided in the NASTF process, the technician could bring the complaint to an independent third party dispute resolution program. Pursuant to certain procedures and time constraints, the third party enforcement entity would render a binding decision regarding whether the informational dispute should be made available in accordance with the voluntary standards agreed to by the manufacturer. Any manufacturer faced with a negative final decision would be required to provide the information to both the technician that brought the complaint and to the aftermarket in general and pay a penalty for non-compliance.

Throughout these discussions, CARE's primary objectives were to achieve a program that would be effective in quickly communicating needed information to service technicians in a fair and impartial manner and incorporating the elements articulated by the FTC for an acceptable self regulatory system. It is important to note that our goal is to impose the same requirement articulated

in H.R. 2048 that information should be provided to the aftermarket in a similar manner and to the same extent as such information is provided to franchise dealerships. We made it clear that we were not seeking any additional information or anything that could be considered a trade secret. In the proposed new arrangement, NASTF would have been reorganized as a new organization and would hire professional staff to assist technicians seeking service, training, or tool information from an automotive manufacturer.

In previous hearings on the right to repair issue, evidence was presented regarding NASTF's track record in assisting technicians seeking information and the reluctance by a majority of technicians even to contact NASTF in the first instance. For these reasons, CARE was initially skeptical about whether NASTF was the appropriate body to quickly resolve disputes regarding the accessibility of information. Nonetheless, we were willing to allow NASTF to act as the first response for service information requests provided that specific safeguards were put in place to ensure that the newly reconstitute structure would be successful in implementing the goals of the self-regulatory program and that the third party enforcement entity would provide an avenue to either enforce a NASTF decision or challenge its correctness. The most important safeguard in our view was the creation of a fair and balanced board of directors.

We therefore propose that initial funding for the reconstituted NASTF be equally divided between the aftermarket industry through CARE and AAIA and the automobile manufacturing industry through the Alliance and AIAM. We further propose that NASTF be administered by a governing board comprised of eight members four of whom would be designees of CARE and AAIA and four of whom would be the designees of the Alliance and AIAM. This allocation of membership was to ensure that both the aftermarket and the manufacture representatives through their discussions would have equal presence on the board. Nonetheless, CARE remained open to increasing or decreasing the size of the board provided that the balance of representation was equally allocated between the two sides. The proposal also provided that an executive director and support staff be employed as the board deemed necessary and that an advisory committee equally representative of the manufacturing and aftermarket industries be appointed by the board to assist in recommending policies to effectuate purposes of the agreement.

In contrast, the Alliance and AIAM objected to the idea that AFA and NADA which had openly aligned themselves with the manufacturer associations throughout the discussions be considered as part of the manufacturer contingent on the board. They further proposed that the composition of the board be left open for future discussion. According to the proposal, a special working group comprised of the four parties of the manufacturer contingent and CARE and AAIA would direct and implement all legal and operational steps necessary to establish NASTF. Not surprisingly, we were concerned about the lopsided representation on a working group that would be tasked with setting up NASTF. In addition, we were equally concerned that decisions regarding the governance of

NASTF including the composition of the first board be postponed until some unspecified date in the future.

Mr. STEARNS. I just need you to sum up.

Mr. PARDE. Thank you, Mr. Chairman.

I would be happy to answer any questions, thank you.

[The prepared statement of David Parde follows:]

PREPARED STATEMENT OF DAVID PARDE, PRESIDENT, COALITION FOR AUTO REPAIR  
EQUALITY

I. INTRODUCTION

Mr. Chairman and members of the Committee, I am David Parde, President of the Coalition for Auto Repair Equality or CARE. CARE appreciates the opportunity to appear before you today to discuss the right to repair issue, as well as CARE's discussions with automobile industry representatives regarding a self-regulatory program to address these problems, and the legislative option presented by H.R. 2048, The Motor Vehicle Owners' Right to Repair Act of 2005.

The Coalition for Auto Repair Equality is a national, nonprofit organization representing companies in the \$200 billion-a-year, five million employee automotive aftermarket industry. CARE's members operate businesses at 34,820 locations throughout the United States. Of these, 15, 270 are automobile maintenance and/or repair facilities where consumers often bring their cars to be worked on by automotive technicians. Our members include repair shops such as Midas and Jiffy Lube, and companies that sell replacement parts to "do it yourselfers" and independent repair shops, such as Advance Auto Parts, O'Reilly's Auto Parts, and Auto Zone. Other members include CAR QUEST and NAPA, companies that sell parts through retail stores and provide repair services through individually owned, franchised shops.

Because CARE was involved in the discussions regarding a proposed self-regulatory system, I will first focus on those efforts, and then provide CARE's views regarding H.R. 2048.

II. INDUSTRY SELF REGULATION

A. *Why the Current System is Not Effective*

The National Automotive Service Task Force (NASTF) is a loosely organized, voluntary task force funded by the automobile manufacturers. It was formed in 2000 purportedly to resolve issues or problems relating to the availability of diagnostic and repair tools and information for motor vehicles. Our experience shows that NASTF operates only as a clearinghouse for complaints from independent repair facilities. NASTF receives complaints related to the failure of an automobile manufacturer to make certain information available and then forwards the complaint to the manufacturer to resolve. Once it receives a response from the manufacturer, NASTF communicates the response to the repair facility. It does not apply standards regarding when and how such complaints should be resolved, and does not attempt to resolve complaints regarding the availability of information. Moreover, there is no transparency or accountability built into the NASTF process.

When measured against standards for effective self-regulatory programs enunciated by the Federal Trade Commission, the NASTF program receives a failing grade. In fact, in a letter to the Alliance of Automobile Manufacturers from the FTC (attached as Exhibit A), the agency staff indicated that industry programs must be backed up by a system of enforcement, incorporating independent, third-party review. According to the FTC, such independent review should: (1) be impartial and objective; (2) be transparent or public; and (3) apply standards consistently. The FTC letter explains that independent review ensures that individual companies or other industry members are not the sole arbiters of whether their practices comply with relevant standards. As described above, NASTF's review system fails to incorporate even one of the elements of an effective third-party review system.

In addition, the FTC has long stressed the need for self-regulatory programs to include some form of sanctions for non-compliance with codes or standards. Such sanctions may include referral of complaints to the FTC, as is the case with several different programs sponsored by various segments of the advertising industry. In fact, the FTC stated to Congress in a 2000 Report to Congress on Online Profiling that: [t]he bedrock of any effective self-regulatory or legislative scheme is enforcement. In a self-regulatory context, this means that nearly all industry members subject themselves to monitoring for compliance by an independent third party and to

sanctions for non-compliance.” The current NASTF system, however, provides no such mechanism for enforcement.

There is little doubt that these structural inadequacies have contributed to NASTF’s failure to facilitate the disclosure of service information to aftermarket technicians, as well as the mistrust that has developed among the vast majority of the aftermarket industry regarding NASTF’s ability to correct the kind of problems described in the next panel by Mr. Bob Everett, NFIB’s representative and the only service technician to have participated in the discussions regarding the self-regulatory program.

#### *B. Recent Efforts to Achieve an Effective Self-Regulatory Program*

Following the introduction of H.R. 2048, CARE, together with representatives from the Automotive Aftermarket Industry Association (AAIA), the Alliance of Automobile Manufacturers (Alliance), the Association of International Automobile Manufacturers (AIAM), the Automotive Service Association (ASA), and the National Auto Dealers Association (NADA), at the request of Chairman Joe Barton and Senator Lindsey Graham, engaged in a series of discussions this summer over a two month period in an attempt to develop a voluntary industry self-regulatory program that would obviate the need for the proposed legislation. These talks were facilitated by representatives of the Council of Better Business Bureaus (CBBB) and monitored by the Federal Trade Commission staff. As you are aware, the talks were concluded without a final resolution that would ensure the timely disclosure of automotive repair, diagnostic and tool information to the aftermarket industry to the same extent such information is made available to franchised dealerships. Although significant progress had been made toward developing a workable program with an enforcement component, and the participants mutually agreed to continue negotiating for an additional month beyond the initial deadline, the automobile manufacturer contingent ultimately refused to agree to provisions that CARE believes are critical elements of a workable program.

The program under discussion would have required automobile manufacturers to commit in writing to abide by a set of “voluntary standards” for making information and tools available to the aftermarket in a similar manner and to the same extent as such information is made available to the dealerships. The standards also set out a process to enforce the commitment made by each company. Under the program, technicians seeking information or tools to repair a vehicle but unable to locate the necessary information would first be required to contact a representative of NASTF to obtain assistance. The parties had agreed that NASTF would be reconstituted and employ trained service technicians who would act as a “buffer” between the technician and the manufacturer to determine if the information was available, and if not, to make a recommendation about whether it should be made available.

In the event the necessary information was not provided in accordance with the time requirements of the proposed NASTF process, the technician could bring the complaint to an independent, third party dispute resolution program. Pursuant to certain procedures and time constraints, the third party enforcement entity would render a “binding” decision regarding whether the information in dispute should be made available in accordance with the voluntary standards agreed to by the manufacturer. Any manufacturer faced with a negative final decision would be required to provide the information to both the technician that brought the complaint and to the aftermarket in general, and pay a penalty for non-compliance.

Throughout these discussions, CARE’s primary objectives were to achieve a program that would be effective in expeditiously communicating needed information to service technicians in a fair and impartial manner, and in incorporating the elements articulated by the FTC for an acceptable self-regulatory system. It is important to note that our goal was to impose the same requirement articulated in HR 2048 that information should be provided to the aftermarket in a similar manner and to the same extent as such information is provided to franchised dealerships. Although the manufacturer contingent stated that it agreed in principle with this goal, it ultimately backed away from this commitment, as demonstrated below.

#### *C. Issues in Dispute*

**1. NASTF Governance**—During the discussions facilitated by the CBBB, the manufacturers acknowledged some of NASTF’s shortcomings, and had agreed to form a reconstituted organization and hire professional staff to assist technicians seeking service, training or tool information from an automotive manufacturer. The new NASTF would have had the authority to seek the service information on the technician’s behalf and communicate directly with the manufacturer pursuant to a specified process. In the event the manufacturer failed to provide the information, the NASTF staff would prepare a written report of its efforts to resolve the inquiry

with the manufacturer and make a recommendation as to whether the manufacturer should make the information available to the technician. In the event that either party disagreed with the recommendation, that party would proceed to have the dispute resolved by the independent, third party enforcement entity.

In light of NASTF's poor track record, however, CARE was initially skeptical about whether NASTF was the appropriate body to expeditiously resolve disputes regarding the accessibility of information. Nonetheless, we were willing to allow NASTF to act as the first response for service information requests provided that unambiguous, specific safeguards were put in place to ensure that the newly reconstituted structure would be successful in implementing the goals of the self-regulatory program, and that the third party enforcement entity would provide an avenue to either enforce a NASTF decision or challenge its correctness. The most important safeguard, in our view, was the creation of a fair and balanced Board of Directors of NASTF.

CARE and AAIA therefore proposed that initial funding for the reconstituted NASTF be equally divided between the aftermarket industry through CARE and AAIA, and the automobile manufacturing industry through the Alliance, AIAM, ASA and NADA. We further proposed that NASTF be administered by a Governing Board comprised of eight members, four of whom would be designees of CARE and AAIA, and four of whom would be designees of the Alliance, ASA, NADA and AIAM. This allocation of membership was to ensure that both the aftermarket and the manufacturer representatives to the discussions would have equal presence on the board. Nonetheless, CARE remained open to increasing or decreasing the size of the board, provided that the balance of representation was equally allocated between the two sides. The proposal also provided that an executive director and support staff be employed as the Board deemed necessary, and that an Advisory Committee, equally representative of the manufacturing and aftermarket industries, be appointed by the Governing Board to assist in recommending policies to effectuate the purposes of the agreement.

In contrast, the manufacturers objected to the idea that ASA and NADA, which had openly aligned themselves with the manufacturers throughout the discussions, be considered as part of the manufacturer contingent on the board. They further proposed that the composition of the board be left open for future discussion. According to the proposal, a "special working group" comprised of the four parties in the manufacturer contingent—the Alliance, AIAM, ASA and NADA—and CARE and AAIA, would "direct and implement all legal and operational steps necessary to establish the NASTF..." Not surprisingly, CARE was concerned about the lopsided representation of the manufacturer contingent to a working group that would be tasked with setting up NASTF. In addition, we were equally concerned that decisions regarding the governance of NASTF, including the composition of the first board, be postponed until some unspecified date in the future. CARE was fearful that the new organization would be severely hampered by disputes over governance issues and wanted to resolve these during the negotiation process by specifying the procedure for appointing representatives to the first board. Under the proposal from AAIA and CARE, once the board was organized, there would be nothing to prevent the addition of other members that were determined by the board to be necessary and appropriate to carry out the functions of the reorganized NASTF. The car companies would not, however, agree to an even division of the NASTF Board.

**2. Tools and Tool Information**—CARE also believes it is crucial that any self-regulatory system require that automobile manufacturers make their tools and tool information available to the aftermarket. Nonetheless, the manufacturers would not commit to making available to the aftermarket tools possessing the same diagnostic and repair capabilities that are available to dealerships. Without such a commitment, tools purchased by independent technicians from the manufacturers may not contain needed capabilities to complete a repair.

In addition, CARE was seeking a commitment that the manufacturers make available to tool companies the information needed to manufacture tools containing the same diagnostic and repair capabilities that are available on dealer tools, subject to reasonable licensing and security requirements. Independent technicians would otherwise be forced to purchase required tools only at prices set by the automobile manufacturers. Given the complexity of this issue, CARE was willing to finalize at a later time the details of how such information would be made available and how the agreement would be enforced, provided that the manufacturers made a commitment to fully release needed tool information. The manufacturers would not, however, agree to these terms. In fact, the manufacturers sought to limit any obligation regarding tool information to information needed to produce only "diagnostic scan" tools (a requirement already in the Clean Air Act) and tire pressure monitoring system diagnostic tools. We believed this limitation would potentially re-

strict the aftermarket's ability to obtain diagnostic and repair capabilities necessary to service new technologies that may develop in the future.

**3. Anti-theft Initialization Information**—Many independent repair shops find it increasingly difficult, if not impossible, to complete repairs on cars that contain immobilizer systems designed to prevent the theft of a car. By way of background, it is useful to understand some of the mechanics of a car's immobilizer. Immobilizer systems require a "handshake" between a chip in the ignition key and a chip placed on an on-board computer. Unless the handshake occurs, the car cannot be started. If a vehicle computer that contains the immobilizer chip is changed, the system must be "reinitialized" in order for the vehicle to be restarted following the repair. Since an immobilizer is tied into multiple different systems of a vehicle depending on the manufacturer's design, technicians need access to manufacturer information about the immobilizer system such that the technician can diagnose and repair problems related to the immobilizer and can reinitialize any vehicle system required to start the vehicle following a repair.

CARE therefore proposed language that would require the manufacturers to make available anti-theft initialization information and other information, including any software, necessary for the proper installation of on-board computers or necessary for the completion of any repair on vehicles that employ integral vehicle security systems. CARE was not seeking information to build an immobilizer system; only the information needed to restart a car following a repair.

Although some manufacturers routinely make this information available now, the representatives for the Alliance and AIAM indicated that at least one of its members did not have the ability to provide this information, and that several manufacturers objected in general to the requirement that software be provided in connection with any tool. This was the case notwithstanding that such information is routinely provided to franchised dealerships.

**4. Service Information**—Manufacturers maintain "hotlines" for their dealers to call with questions regarding diagnosis and service, and publish technical service bulletins and manuals to distribute service information. Although CARE was not seeking an identical "hotline" process for making the service information available to the aftermarket, we were seeking a requirement that service information be provided to the aftermarket in a similar manner and at the same time it is provided by a manufacturer to its dealerships. The manufacturers were unwilling to agree to an equivalency requirement for service information that is provided through the hotlines but is not yet communicated in a formal manner to all of their dealerships. This position is especially troubling to CARE since it indicated an outright refusal to place the aftermarket on the same footing with franchised dealerships in regard to access to basic service and repair information.

**5. Cost of Tools and Service Information**—Late in the negotiations we learned that although the manufacturers had agreed in the "voluntary standards" to provide information and tools at a reasonable price, they would not agree to any enforcement of this commitment. Although antitrust issues could make it difficult for NASTF to resolve disputes over the reasonableness of the cost of information or tools, we did not believe these concerns applied equally to an independent third party dispute resolution organization.

In an effort to address our most serious concerns about the cost of tools and information, we offered a compromise that would address situations when such information or tools are offered at a price that is viewed as predatory, meaning that the price is so high as to make it, for all intents and purposes, unavailable to the aftermarket. Our proposed language would have allowed the resolution entity to make a finding that the information was not made available because it was offered only at an "unreasonably prohibitive cost" to the aftermarket. We believed that the focus on cost (as opposed to price), would alleviate anticompetitive concerns, and that use of the phrase "unreasonably prohibitive" would limit any inquiry to cases involving "price gouging" or the use of price as a barrier to disclosing information to the aftermarket.

Notwithstanding our attempt at compromise, the manufacturers indicated that they would not agree to any enforcement of a reasonable price requirement under any circumstances. In fact, they refused our offer even if it received a favorable opinion by an independent legal expert chosen by the CBBB, thus signaling that their objection was primarily based on so called "policy" reasons as opposed to legal concerns.

**6. Penalties**—CARE and AAIA initially sought a provision that would have allowed the third party enforcement entity, upon reaching a final decision that a manufacturer should have provided information to a technician but failed to do so, to require the manufacturer to compensate the technician in an amount equal to three times the profit he would have earned for the repair. The treble damages approach

was an attempt to compensate the technician for the loss of the repair in question, and any future work he was likely to have received from the customer.

The manufacturers objected to treble requirement and ultimately proposed a single payment of \$2,000 as compensation for a successful challenge against a manufacturer. After much consideration, CARE and AAIA agreed to this amount, provided that there would be some incentive to ensure that the award is paid in a timely manner. We therefore proposed an "escalation" clause that would have allowed the enforcement entity to impose an additional compensation remedy of \$11,000 per day for each day the initial amount remained unpaid following the due date.

The manufacturers objected to this compromise and offered no suggestion for bridging the gap in our positions.

### III. LEGISLATION IS NEEDED TO ENSURE EQUAL ACCESS TO SERVICE, REPAIR AND TOOL INFORMATION AND TOOLS

As described above, CARE and AAIA, together with representatives from the associations representing the automobile manufacturers and dealers, and ASA, were unsuccessful in reaching a satisfactory self-regulatory solution that would have met the criteria applied by the FTC in evaluating such programs. As such, the aftermarket industry is left with the current NASTF process, which, as discussed previously, is neither effective nor independent. In light of the current problems facing aftermarket repair facilities seeking manufacturer information and tools needed to complete service work and repairs on cars, CARE strongly supports the passage of H.R. 2048.

H.R. 2048 sets out reasonable and enforceable standards for mandating the disclosure of information to the aftermarket. It states, "the same service and training information related to vehicle repair shall be made available in the same manner and extent as it is made available to franchised dealerships, and shall include all information needed to activate all controls that can be activated by a franchised dealership." By linking the disclosure obligation of the manufacturer to the information that is currently provided to franchised dealerships, the legislation is carefully crafted to create a level playing field for service information and avoids trade secret issues. Indeed, the manufacturer contingent did not raise any concerns about the disclosure of proprietary information once it understood that CARE and AAIA were seeking only an equivalency requirement in relation to franchised dealerships.

CARE also supports the bill's requirement that diagnostic tools and capabilities related to vehicle repair that are made available to franchised dealerships also be made available to independent repair facilities, and to the companies from which they normally purchase diagnostic tools. This provision will ensure that tool information is made available to tool companies seeking to manufacture generic tools and support a competitive market and lower costs for independent repair facilities seeking to purchase tools.

Finally, CARE supports giving the FTC authority to enforce the disclosure requirements of the bill. In that the bill's ultimate goal is to ensure that American consumers have the opportunity to choose among competing repair facilities for convenient, reliable and affordable repair of their vehicles, the FTC, as the nation's watch dog for consumers, is uniquely positioned to promulgate rules to effectively carry out the bill's mandate. The FTC has both the expertise and experience to draft rules that ensure that disclosures of service information are adequate and meet the equivalency test set out in the legislation.

Thank you for the opportunity to appear today before the Subcommittee. I would be pleased to respond to any questions you may have.

Mr. STEARNS. And I thank the gentleman.  
Mr. Stanton?

### STATEMENT OF MICHAEL J. STANTON

Mr. STANTON. Thank you, Mr. Chairman.

Almost 500 million non-warranty service events are undertaken each year. While we hope that each and every one of these events go as well as possible, we recognize that with literally millions of pages of service and repair information that need to be available, there will be instances where needed information is not available.

To address these situations in the Year 2000, the National Automotive Service Task Force or NASTF was created to help identify and fix any gaps in the availability and accessibility of automotive

service information, service training, diagnostic tools, and equipment. Working together, the volunteers at NASTF have implemented web based links to every automakers service information website. NASTF has improved communications between automaker engineers and the Equipment and Tool Institute to ensure that scanned tool information is available to aftermarket tool manufacturers.

NASTF is currently working with the locksmiths and the National Insurance Crime Bureau and has established the NASTF Vehicle Security Committee. This committee is working on the controversial and highly complex issues of providing information to automotive security professionals without compromising vehicle security and customer safety.

Turning to the negotiations, I really would like to thank the FTC, the Better Business Bureau and the CARE Coalition. It was a grueling process and I think we are all disappointed that it did not conclude in a satisfactory non-legislative fix. But that is what we were about and we did meet in 10 all day negotiating sessions during the month of August and September. During the discussions, it was clear that the vast majority of service information is readily available today.

Our talks eventually focused on a small subset of repair information used to service and reprogram vehicle security systems and immobilizers. Due to the sensitive nature of this type of information, automakers, locksmiths, and independent repairs are already engaged in identifying and developing secure methods to share this information with automotive security professionals.

In addition, the automakers offer the following to further improve the process of providing service repair information. One, automakers would continue to make vehicle service information available to independent service technicians when they send it to all of their dealers. The outstanding security issues which was the mobilizers and the keys would be addressed through the NASTF Vehicle Security Committee. Two, automakers would continue to make service information tools and tool information available for non-emission repairs and this was a big step, consistent with the EPA requirements for emissions repairs. So we were going to parallel the regulations that exist on the emission repairs now. Three, and this was above and beyond what was even in the legislation, automakers would provide prompt response to their websites inquiries normally within 24 hours. Four, automakers would agree to formalize and help fund the NASTF which would then be able to in even greater degree to provide independent service technicians, assistance in finding service information, as well as, serve as a clearing house to resolve repair information and tool access issues. And five, automakers would participate in a binding dispute resolution program with enforceable remedies for non-compliance.

Unfortunately at the very end of the discussions, CARE, a lobby group funded by large aftermarket parts manufacturing companies demanded effective control over the governance of the reconstituted NASTF. CARE's insistence on controlling at least 50 percent of a NASTF governing board would have significantly diminished the voices of the most important stakeholders in this issue; repair



shops, diagnostic equipment makers, automakers, and automotive trainers.

This development was particularly unfortunate because many of the issues that had been agreed to or that were very close to agreement would have enhanced the ability of independent service and repair owners to obtain the information and to resolve potential disputes over such information. In fact, the agreements reached or nearly reached on these issues addressed concerns that exceed those contemplated in the legislation before us.

Although disappointed, the talks could not be completed. Automakers and others continue to work toward ensuring that all service and training information necessary for vehicle repair and maintenance published and made available to dealers is also available to independents. To ensure that the tool information necessary to implement the same scan tool functions that dealers have is made available to diagnostic equipment manufacturers for inclusion in aftermarket scan tools. And finally, improving the formalizing the NASTF process that identifies gaps in service information and assures that these gaps are quickly remedied.

In conclusion the Alliance believes that this legislation is not needed to further this process. In fact, attempts to legislate a Federal overly over the current process may well undermine the successful resolution of the remaining outstanding issues.

Thank you, Mr. Chairman.

[The prepared statement of Michael J. Stanton follows:]

PREPARED STATEMENT OF MICHAEL J. STANTON, VICE PRESIDENT—GOVERNMENT AND INTERNATIONAL AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

Thank you for the opportunity to testify before the Commerce, Trade and Consumer Protection Subcommittee regarding H.R. 2048 the "Motor Vehicle Owners' Right to Repair Act of 2005" and the Council of Better Business Bureau's facilitated discussions on this issue. I represent the Alliance of Automobile Manufacturers, (Alliance) a trade association of 9 car and light-truck manufacturers. Our member companies include BMW Group, DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, Mazda, Mitsubishi, Porsche, Toyota Motor North America and Volkswagen of America.

Alliance member companies have more than 600,000 employees in the United States, with more than 230 manufacturing facilities in 35 states. Overall, a University of Michigan study found that the entire automobile industry creates more than 6.6 million direct and spin-off jobs in all 50 states and produces almost \$243 billion in payroll compensation annually.

Historically, about 75 percent of vehicle service and repairs are performed in non-dealer shops. Automakers view these non-dealer shops as important players in providing service to their mutual customers, the driving public. Just as motor vehicles have become more complex, the servicing of them has also become a high technology business requiring skilled, trained technicians and a sizeable investment in diagnostic and repair equipment. For independent repairers to be successful, they need to have access to up-to-date training information and specialized tools as well as service and repair information. Today, all major automakers have websites where independent technicians can access service information.

Almost 500 million non-warranty service events are undertaken each year. While we hope that each and every one of these events is as easy to facilitate as possible, we recognize that with literally millions of pages of service and repair information that need to be available, there will be instances where needed information is unavailable. The automakers try to correct these situations as quickly as possible. There are situations, however, where access to some desired information might not actually be reasonable or appropriate—such as the immobilizers that are part of theft deterrent/security systems.

To address these various situations, in the year 2000, the National Automobile Service Task Force (NASTF) was created as a not-for-profit, no-dues task force to facilitate the identification and correction of gaps in the availability and accessibility

of automotive service information, service training, diagnostic tools and equipment, and communications for the benefit of automotive service professionals. NASTF is a voluntary, cooperative partnership between automakers, the independent aftermarket repair community, the automotive equipment and tool industry, automotive trainers, locksmiths, suppliers, the insurance industry, law enforcement, auto dealers and others. The NASTF inquiry process, which has been highly publicized for several years in major trade publications like Motor and Motor Age Magazines, has received fewer than 50 inquiries in the past year about lack of, or difficulty in, finding information. The NASTF complaint process is well established at this point, readily accessible on the public internet (at [www.nastf.org](http://www.nastf.org)) and every complaint and its respective solution is transparent on the International Automotive Technicians Network, a well-recognized Internet forum of over 48,000 professional independent and dealership automobile repair technicians.

Working together, the volunteers at NASTF have implemented web based links to every automakers service information website with contact information. NASTF has succeeded in improving communications between automaker engineering groups and the Equipment & Tool Institute to ensure that scan tool information is readily available to aftermarket tool manufacturers. NASTF has reached out to the locksmith community and the National Insurance Crime Bureau and established the NASTF Vehicle Security Committee to address the controversial and highly complex issues surrounding methods to provide information to automotive security professionals without compromising vehicle security and customer safety.

Since its inception, automakers and the Automotive Service Association (ASA), the nation's largest association of independent repair shops and technicians have invited all other interested parties to participate in the NASTF voluntary process.

#### COUNCIL OF BETTER BUSINESS BUREAUS, INC. FACILITATED DISCUSSIONS

At the urging of Senator Graham and Energy and Commerce Committee Chairman Barton, representatives of the Alliance, the Association of International Automobile Manufacturers (AIAM), the ASA and the National Automobile Dealers Association (NADA) met with the Coalition for Auto Repair Equity (CARE) and the Automotive Aftermarket Industry Association (AAIA) in facilitated discussions to negotiate a non-legislative, self-regulatory program to re-enforce access to information and to establish a process to resolve complaints/disputes more quickly.

The parties met in 10 all-day negotiating sessions during the months of August and September; the Council of Better Business Bureaus, Inc. hosted the meetings. During the discussions it was clear that the vast majority of service information is readily available today. Our discussions eventually focused on a small subset of repair information used to service and reprogram vehicle security systems and immobilizers. Due to the sensitive nature of this type of information, automakers, locksmiths and independent repairers are already engaged in identifying and developing secure methods to share this information with automotive security professionals. The NASTF Vehicle Security Committee has been actively working on these complex issues for over a year.

In addition, automakers offered the following outline of possible steps to further improve the process of providing service/repair information:

1. Automakers would continue to make vehicle service information available to independent service technicians when they send it to all of their dealers. The outstanding security issues would be addressed through the NASTF vehicle security committee.
2. Automakers would continue to make service information, tools and tool information available for non-emissions repairs consistent with the EPA requirements for emissions repairs.
3. Automakers would provide prompt response to their website inquiries normally within 24 hours.
4. Automakers would agree to formalize and help fund the NASTF, which would then be able, to an even greater degree, to provide independent service technicians assistance in finding service information as well as serve as a clearing house to resolve repair information and tool access issues.
5. Automakers would participate in a binding dispute resolution program with enforceable remedies for non-compliance.

Unfortunately, at the very end of the discussions, CARE -- a lobby group funded entirely by the larger aftermarket parts manufacturing companies -- demanded effective control over the governance of the reconstituted NASTF. CARE's insistence on controlling at least 50 percent of a NASTF governing board would have significantly diminished the voices of the most important stakeholders in this issue; repair shops, diagnostic equipment makers, automakers and automotive trainers.

This development was particularly unfortunate because many of the issues that had been agreed to, or that were very close to agreement, would have enhanced the ability of independent service and repair owners to obtain the information and to resolve potential disputes over such information quickly and efficiently. In fact, agreements reached, or nearly reached, on these issues addressed concerns that exceed those contemplated by the legislation the proponents of H.R. 2048 seek to enact. On September 30, 2005, the discussions ended without reaching final agreement.

Although disappointed the talks could not be completed, the automakers, independent repair shops and technicians represented by ASA, the Equipment and Tool Institute, and automotive trainers continue to work toward:

- Further assurances that all service and training information necessary for vehicle repair and maintenance published and made available to dealers is also available to independents.
- Further assurances that tool information necessary to implement the same scan tool functions that dealers have is made available to diagnostic equipment manufacturers for inclusion in aftermarket scan tools
- Further improvements/formalization of the NASTF process that identifies gaps in service information and ensures that these gaps are quickly remedied.

Turning to the text of H.R. 2048, we continue to have concerns about the need for the legislation. Beyond that, we also have substantial concerns about the language of the legislation and at several points its apparent intent.

First, the findings of the legislation are unnecessarily harsh, factually inaccurate in many cases and unfair to the automakers that have made significant efforts to provide service information and tools to all independent automotive service providers. Automakers are committed to making service information and tools available and have been doing so for some time. Although important issues were identified during our negotiations with the CARE Coalition, we did not hear allegations of any widespread breakdown of the systems established by automakers to resolve anomalous service information and tool gaps. For this reason, we strongly take issue with the statements in the “findings” section of the bill that concludes that automakers have systematically engaged in “a manner that has hindered open competition.” Since “anticompetitive behavior” is illegal under federal and state law, branding all automakers with this unfounded conclusion is both unreasonable and places them at legal risk.

Moreover, the findings address an issue that goes beyond the scope of the legislation: namely, whether consumers should always be able to choose between original parts and aftermarket parts for vehicle repairs. This issue quickly fell off the table during discussions and is not appropriate for the findings of this bill.

Second, the legislation is not precise in describing the scope of what is being sought by the proponents of the bill. For example, the language appears to confuse “information” with actual diagnostic “tools.” It also appears to override the standard and accepted practice of providing some service and training information to the independent service providers by means other than that used to communicate with dealers. The satellite networks and programs used to communicate with dealers cover a wide variety of topics and are not appropriate to be opened to independent repair facilities. However, hard copies of materials or CD-ROMs of the relevant portions of these broadcasts are often used to provide the relevant information on service/repair issues to independent facilities. EPA intentionally carved out this provision because automakers cannot be expected to build special delivery infrastructures for the aftermarket that they build for their franchised dealers. The CARE Coalition has not otherwise sought access to the satellite-based information delivery system of the manufacturers, and this legislation should not force changes in the current practices.

As another example, the text would require making the “same diagnostic tools and capabilities related to vehicle repair” available to the independent service provider as are available to franchised dealers. We do not know what is intended by the word “capabilities” in this context. It could mean that manufacturers would have to grant access to their dealer “hot lines,” which are used to provide one-on-one diagnostic help to dealers who call for technical assistance. The CARE Coalition has assured us that they are not seeking access to these services, and the language should not leave this issue open.

We also believe that the language is broad enough that it might interfere with existing contracts between automakers and their franchised dealers, as well as with contracts automakers have with fleet purchasers that specify particular provisions regarding obtaining warranty and other service.

We also strongly object to the language in the bill that says that failure of a manufacturer to comply is automatically “an unfair method of competition and an unfair

or deceptive act or practice in or affecting commerce" under the Federal Trade Commission Act. While automakers will always strive to comply with any FTC regulation, minor discrepancies should not give rise to an automatic pre-determination that they reflect the very serious charge of being "an unfair method of competition and an unfair or deceptive act or practice". The FTC has ample authority to decide when a regulatory violation constitutes "an unfair method of competition" or "an unfair or deceptive act or practice."

In conclusion, The Alliance, AIAM, ASA and NADA and others continue to address the remaining service information issues and believe that legislation is not needed to further this process. In fact, attempts to legislate a federal overlay over the current process of providing information and attempting to resolve disputes may well undermine the successful resolution of the remaining outstanding issues.

Mr. STEARNS. I thank you.

And I will start the first set of questions for the first panel.

Information is power, in this case, horsepower. Mr. Kohm, I think I would ask you just as general opinion and this would—I assume this would be the policy of the Federal Trade Commission that consumer access to deciphering the complex machine, the automobile machine is that a right? Sort of should the automotive parts facilities have the rosette of stone to decipher these complex machines as a right and not an option in your opinion?

Mr. KOHM. Well Congressman, excuse me—

Mr. STEARNS. I just need a yes or no.

Mr. KOHM. I think it is not necessarily a right.

Mr. STEARNS. It is not necessarily a right. So a fundamental question is do these automotive parts have a right to this information? You do not think they have a right?

Mr. KOHM. That Chairman that—

Mr. STEARNS. Because of propriety information, I will help you out here.

Mr. KOHM. People who sell cars have an interest in consumers being able to repair those cars or they will not sell the cars. So that I think the market will allow—

Mr. STEARNS. But the car has a warranty let us say for 50,000 or 100,000 so everybody is going to go back to the dealer. But at that point after 50,000 or 100,000, shouldn't the consumer be able to go to somebody other than the dealer to get it fixed?

Mr. KOHM. Well, the consumer has an interest in the efficient functioning of the market so that they have options for repairing their cars.

Mr. STEARNS. Okay, all right.

Let me say, Mr. Cole, I am pleased to hear that you say that the negotiations were in good faith. And I mentioned in my opening statements where you had agreement and where you did not have agreement. On these issues you mentioned that are unresolved, which in your opinion would be the most difficult for the parties to resolve through these negotiations? Just the one issue you think is the really tough one that you just kept running up against a hill and you could not get any further.

Mr. COLE. Well, let me answer it this way. I think the most important issue, I do not know if it is the most difficult but the most important issue is the governance issue that Mr. Parde and Mike Stanton—

Mr. STEARNS. Okay.

Mr. COLE. But I think there was another issue lurking here and it is close to your rights question. I believe that below the surface

of the manufacturers have a fear of the implications of agreement on potential private class actions which were not the subject of our meetings. But I think lurking there was a fear of the unknown implication in what they were doing.

Mr. STEARNS. Do you think—I am asking the same question I asked Mr. Kohm. Do you think consumer's access to this Rosetta stone to decipher these complex machines is a right? Is an actual right for the consumer?

Mr. COLE. I think it is important. I do not know that it is presently articulated anywhere as a legal right and I think it is by and large being provided now when we are talking around the margin.

Mr. STEARNS. Okay. Well, let me ask Mr. Parde and Mr. Stanton just quickly on that because I have one more question before I go.

Mr. Parde, I mean, do consumers have a right to be able to go to these automotive shops other than the dealers and get their car repaired?

Mr. PARDE. I believe so.

Mr. STEARNS. Okay.

Mr. PARDE. I think when someone—when you purchase a vehicle you have the right to the information to repair that vehicle and you—

Mr. STEARNS. Because Mr.—Chairman Barton mentioned it in his opening statement is this is a right that the automobile—that once you buy your car, you own the car. It is your—you would have the right to—

Mr. PARDE. I would agree—

Mr. STEARNS. [continuing] understand how it operates and where it goes.

Mr. PARDE. I would agree with that.

Mr. STEARNS. And Mr. Stanton?

Mr. STANTON. Mr. Chairman, we would disagree that they have the right to the intellectual property associated with the vehicle. But it is in our best interest that any consumer, any vehicle owner can take their vehicle to any shop that they choose to get it repaired.

Mr. STEARNS. Okay. Mr. Parde, Mr. Stanton testified that only 50 inquiries were received through NASTF last year out of 500 million non-warranty service transactions. This goes to the heart of the problem. Are we talking about a problem—how big is this problem? That is the real question. I mean are we spending these 10 meetings at 4 to 6 hours, you are spending up to 60 hours in negotiation. How big is the problem? Does CARE assert that the problem is larger than this? If so, please comment on the scale of the problem for the committee.

Mr. PARDE. We do believe that it is a big problem. We think that the reason there are not many inquiries to NASTF currently is that the majority of the aftermarket, the majority of the technicians do not trust it, do not believe in it. It is an organization that is overseen by the manufacturers, it is run by the manufacturers, therefore, most technicians and most shops simply do not take the time to submit complaints. I think you have seen a picture—

Mr. STEARNS. Okay. I understand.

Mr.—the FTC, Mr. Kohm, how about the complaints were there from—that went to the FTC? How many complaints did you get? How big a problem do we have here?

Mr. KOHM. That we have heard as the committee has indicated, we have heard antidotal evidence that——

Mr. STEARNS. Not a lot of serious written complaints?

Mr. KOHM. But we have no objective evidence of how widespread the problem is.

Mr. STEARNS. And Mr. Cole, the Better Business Bureau, what kind of written complaints and serious complaints did you get?

Mr. COLE. We would not be able to tell from our data base how many there were but we are not aware presently of a huge problem.

Mr. STEARNS. Okay. With that, the ranking member is recognized, Ms. Schakowsky.

Ms. SCHAKOWSKY. You do though at the Better Business Bureau, Mr. Cole, get 72,000 complaints related to the auto industry. Is it that you cannot——

Mr. COLE. Correct.

Ms. SCHAKOWSKY. [continuing] segregate out those that deal with this?

Mr. COLE. We cannot be sure of what proportion of that 72,000 may have been an inability to get a repair because of the unavailability of information from the manufacturer. I wish some day I could have improvements in that data base so I could answer that question.

Ms. SCHAKOWSKY. From the consumer point of view in terms of making complaints, I do not know that I would necessarily know to do that if Dack Gable said well, you know, you will have to take this to the dealer.

Mr. COLE. Absolutely, absolutely, I would not be surprised that a consumer would not complain about that issue. All they know is they are being referred back to a dealer.

Ms. SCHAKOWSKY. Right.

Mr. PARDE, is there a bottom line issue for you, the 50 percent representation on a governing board on NASTF?

Mr. PARDE. We believe there needs to be a fair and even representation by both sides. You know, we proposed a four, four in which we would appoint four members and that the manufacturers would appoint four members and we think that that is the fair way to go, that the aftermarket would be represented equally with the manufacturers.

Ms. SCHAKOWSKY. One of you testified that there may be more stakeholders. I happen to think that consumers are a stakeholder as well, that some way of representing the consumer interest separate from that of the—representing the aftermarket or the manufacturers. Would that be something that you or Mr. Stanton would object to on some sort of a governing board having consumer representation?

Mr. STANTON. We would welcome that. We want the NASTF governing board to be broad, to be open to all. It has been in existence for 5 years. Earlier I guess last month there was a proposal by the Equipment and Tool Institute that suggested that there ought to be at least 12 funders of the organization. And then just last week

in Las Vegas the NASTF stakeholders got together and they unanimously voted to enhance the organization, so there are lot more stakeholders. Our side, their side is not an accurate representation when it comes to NASTF. Our side, their side was an accurate representation during the facilitated discussions but we do not think this alliance will hold forever. Everyone is going to have their own interest over time.

Ms. SCHAKOWSKY. Go ahead.

Mr. COLE. We would not be opposed to adding additional members down the road. This was an initial proposal to get this organization up and running, get it restructured, reconstituted, and that is why we wanted the even on both sides. We would not be opposed to adding additional members. We never were opposed to that.

Ms. SCHAKOWSKY. What if there were strictly an independent board that were not necessarily funded by stakeholders at all that were—stood apart from all of the financial interests and just judged this—was that ever considered in any way?

Mr. STANTON. That was never considered. No it was not but we have some staff discussions that I think that is an excellent, possibly and excellent way to break this—

Ms. SCHAKOWSKY. And what were the other—one of you also mentioned that there were some other players. Was it you, Mr. Cole?

Mr. COLE. I mentioned the tool manufacturers, the independent information providers that help the independent facilities so there are other in addition to the consumer stakeholders that—and a lot of the issues that were being discussed it was very clear that the parties at the table really could not come to an agreement on these tool issues because the tool folks were not there. That is just one good example.

Ms. SCHAKOWSKY. Now are we at a dead end here in these negotiations? The way the negotiations are currently constituted. And if we wanted to have a non-legislative answer would we have to create a new table to do that in your view, Mr. Parde?

Mr. PARDE. We want the problem to be solved. I mean we do not care if that is—

Ms. SCHAKOWSKY. I do not mean that to be provocative.

Mr. PARDE. Right.

Ms. SCHAKOWSKY. Do you think that it—the way that it was that another 10 hours of 6 days of 10 hour meetings is not going to resolve this and so do you think that we need to go to legislation or is there another way that we could create a table where stakeholders could better resolve the issues?

Mr. PARDE. I think that we have had numerous attempts at negotiations over the last four of 5 years. I think we have gotten to the point where that we would like to see the legislation move forward but we are not closing the door on being able to continue with negotiations at the same time. As I said, we just want to see the problem solved. If that is a non-legislative solution, we would accept that. But right now it appears that the legislative solution is the way to go at this point.

Ms. SCHAKOWSKY. Yes. Mr. Stanton, then I will—

Mr. STANTON. I just want to make the comment that on subsequent conversations I think that we were very, very close on all of

the remaining issues other than the NASTF board. And one of the reasons, one of the things we had done was we had punted to the NASTF board the whole tool and tool information because quite honestly we ran out of time. And to have any weighted kind of a board making policy decisions caused us great concern.

So I think that we still are—I know we are very open to a non-legislative negotiated solution. I kind of like your idea of an independent board to get it away from the biases of the various groups. I would be more than happy to take that back to our membership.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Mr. STEARNS. The full chairman of the committee, Mr. Barton. Chairman. BARTON. Thank you, Chairman Stearns.

I want to ask Mr. Cole who represented the facilitator, did you personally participate in these negotiations?

Mr. COLE. I was the facilitator.

Chairman BARTON. You were the facilitator?

Mr. COLE. Yes, sir.

Chairman BARTON. All right, that is good.

Mr. COLE. Maybe yes, maybe no, we do not have a deal.

Chairman BARTON. Hey, I have been trying to facilitate for 4 years so—

Mr. COLE. Fair enough.

Chairman BARTON. Since I cannot do it, I am not going to blame you for not being able to do it.

Mr. COLE. I appreciate that.

Chairman BARTON. Yes. Your issue No. 1 that you said was not resolved, how should NASTF be restructured and governed? Is that this dispute over the board? Is that what that is?

Mr. COLE. Yes, sir, exactly what it is.

Chairman BARTON. What is wrong if they do not like four, four, what is wrong with four, four, one or something like Mrs. Schakowsky was talking about where we—each side appoints X number hopefully smaller rather than larger and then there be an independent that is maybe appointed by the BBB, by your group as an outside group. Would that work?

Mr. COLE. Let me speak to that and Mr. Parde may have a different view of this so he may want to speak to it.

When we talk about four, four, it is important to as what we are talking about, the manufacturers definitely were agreeing to a balanced board essentially is what that meant. And there was a dispute as to which—who is in which four. Who is representing which side and you could understand that because there were different parts of this industry and I am not complaining about that but—so everyone is agreeing on balance but there is a fear of what would the practical matter of one definition of four, four result in versus a different definition of four, four.

Chairman BARTON. But Mrs. Schakowsky's suggestion that there be a consumer advocate, I mean, it is certainly possible to come up with someone or somebody that is truly independent, somebody from your group.

Mr. COLE. And we would be delighted to serve if asked but the issue of four/four is not handled by a ninth individual. If you feel that the four on the other side includes interests that really should be on the other side of the table, it is really not four, four. You may



view it as a six, two split. And there is a difference of opinion as to who is representing whom and what interest they really have at stake. So if you feel aftermarket is on one side and manufacturers are on another but the manufacturer side includes some of the aftermarket industry, it is a very—it was not clear to anyone at the table that we had achieved the balance on that.

If I may with permission just say one additional thing on the question of is it worth trying some more. I mean only the parties themselves really know if it is.

Chairman BARTON. I will answer that and the answer is no.

Mr. COLE. Okay. Well what I wanted to say is and—

Chairman BARTON. We have had at least four different deadlines over 4 years and they always—it is like the Paris peace talks. You know, the North Vietnamese are always going to want to talk more.

Mr. COLE. And we started out with the shape of the table also so I know exactly what you are saying.

Chairman BARTON. But I do not want to be a whiner but because of the intense urgency of this and feeling we need to get on with it and get this done, we were given a constraint that I believe inhibited our chance of reaching—

Mr. COLE. Well I—and that was we had a September 1 deadline with August approaching—

Chairman BARTON. You did not just start these negotiations when you came into it.

Mr. COLE. Excuse me?

Chairman BARTON. We did not start these negotiations when your group came into it.

Mr. COLE. Oh, I fully—

Chairman BARTON. We bless you for doing what you have done but this has been going on for 4 years.

Mr. COLE. I understand.

Chairman BARTON. Okay. There have been two Congresses elected and unelected in that time period. Okay. We have had a President of the United States elected and reelected in that time period. I mean it is—I do not think Federal legislation is the answer to everything but every now and then see it is the answer to some things. And the individuals involved operate under good faith but the groups they represent, some of them do not want an agreement, they just do not. And the only way to make it happen is in a bipartisan fashion, move a bill, and the question is, you know, how much discretion to give the FTC and the outside groups and what the penalties if any should be when there is not resolution.

I was going to ask you a question about all the six outstanding issues that are unresolved but I am already down to 30 second so I want to go to Mr. Stanton who has done yeoman's work representing the manufacturers. My understanding is that there is not unanimity among the manufacturers in support of this process. To be simplistic, the domestic manufacturers tend to be more supportive of the process and the foreign manufacturers tend to be less supportive. Is that a true statement or an untrue statement?

Mr. STANTON. Mr. Barton, this was a difficult process even within each company there were different views and pulling them all together and representing our association and working with AIAM.

Different companies have different heritages, backgrounds, customs. This——

Chairman BARTON. Well I do not need a long drawn out answer is it—is your group unified or is it not?

Mr. STANTON. It is unified.

Chairman BARTON. It is unified. Every manufacturer was totally involved in the process and totally supportive. If you say that, you are not under oath but that——

Mr. STANTON. No.

Chairman BARTON. [continuing] strains credibility.

Mr. STANTON. They were all involved and it was tough.

Chairman BARTON. Well you can be involved and be against what is going on.

Mr. STANTON. Well different manufacturers had different issues especially with the security side of the—and how they treat key codes and immobilizers and things like that. We all wanted to get to the same place but some of the management and some of the companies were not as far as others.

Chairman BARTON. All right. I have got to ask Mr. Parde the same question. Is your group unified? To me it seems more unified than the manufacturers but that is an observation.

Mr. PARDE. Your observation is correct and we are unified.

Chairman BARTON. And what is the single biggest issue in terms of legislation is it an enforcement mechanism? Is that the most important issue or is there one of these other issues that is more important?

Mr. PARDE. Oversight and enforcement is the most important issue.

Chairman BARTON. My time has expired, Mr. Chairman. Thank you.

Mr. STEARNS. I thank the gentleman.

Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

The first couple of question and I think it is an observation, I started off with opening statements about my experience back home and I see it materializing here. The parts guys are not necessarily with the repair guys. And aftermarket guys—what I am saying is what Mr. Cole is saying. If we want an equal division only because you are an aftermarket person does not necessarily put you in that particular camp with the repair guys or the parts guys. There is so much more going on out there and we are naive as members of this committee to think we really understand all the nuances.

But Mr. Cole, I do know this. You are a facilitator. My experience in the legal world was when we would mediate the closer we got to the trial date, amazing how much we had in the way of the meeting of the minds. I think where we stand today is simply everybody out there is the same. What happens if the House acts? What will we do? What happens in the Senate? We have got plenty of time; it will all shake out one way or the other. The solution probably is to fashion a bill that would be so unacceptable to all sides that it will get you to the bargaining table. And that is just by way of suggestion. And I actually believe that is probably what

is going to happen as this thing goes through the House, through the Senate and what we say the sausage making process.

Now if that is what you all want, that is what you all are going to end up getting. And I think you are hearing the Chairman of the whole committee, Mr. Barton saying he is fed up. And what you will end up getting is a whole lot worse than what you can do determining your own destiny.

Mr. Kohm, my whole question then goes back we do not want to go back to a time when warranties were voided if you just went and had your oil changed somewhere. We want consumer choice and quality service and maintenance so that we can operate these things. But what is so strange is that we are treating the vehicle and its industry and these entities that are associated with it totally different from all others. Because I have never heard anyone say just because they buy a computer, Hewlett Packard or I buy a Zenith TV that I own all that technology. And if someone wants to repair it because I own it, I can go to the manufacturer and say I own it, therefore, I own your patent, trademark, trade secrets. I own everything that goes with it. Divulge all that to the repair guy that just has it over in his repair shop. So why is the automotive industry on the manufacturer's side, the repair side, maintenance, and aftermarket parts, why do we treat it differently or am I just wrong that we are treating this totally differently than we would any other enterprise? What makes it distinct and different?

Mr. KOHM. Well generally, Congressman, it is not distinct and different and that is why the commission believes that a voluntary self regulatory approach is the appropriate approach to addressing this problem.

Mr. GONZALEZ. Okay. Do you foresee that we would have some legal problems in attempting to mandate and treat this particular industry separate and apart when basically the laws will apply equally to all business enterprises?

Mr. KOHM. Congressman, I have not analyzed the legal issues with patents and copyrights but as a general matter, Congress could pass laws and we would enforce them.

Mr. GONZALEZ. Mr. Cole, I think in one of the responses you said something to Chairman Stearns question. Does a consumer have a right, I own the vehicle and such, I would think there is an implied right to have the necessary information to get my car fixed or whatever, it seems logical. But you said and I do not know if this was your quote "by in large that is being provided," the information or whatever. Did you make that statement?

Mr. COLE. I did.

Mr. GONZALEZ. And what did you mean by that?

Mr. COLE. What I meant is I was articulating what seemed to be a reasonably shared opinion at the table that the manufacturers have generally accepted that information to be provided to independent facilities and by in large was being provided but the concern was it was not always being provided and there were presently not effective remedies in CARE's and others point of view to deal with those situations.

Mr. GONZALEZ. And when it is not being provided is it at the level that would require a legislative fix, the Federal Government to come in and legislate a fix?

Mr. COLE. I do not feel competent to answer that question.

Mr. GONZALEZ. Okay. I yield back the balance of my time.

Mr. STEARNS. The gentleman yields back.

Mr. Ferguson? Mr. Ferguson is not here.

Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman.

Let me ask some questions of the panel, in particular Mr. Parde and Mr. Stanton, some questions that we consumers often times ask. And I would like for your candid responses. First of all, automobile dealers that are able to do certain repairs, do they ever subcontract out repairs to local independent mechanics to do some of the work because they cannot either they are back up or they do not have the ability to, for example, body shop work, et cetera. Does that ever happen, Mr. Stanton?

Mr. STANTON. Yes.

Mr. MURPHY. When that happens do the dealers who have proprietary information with regard to the tools or testing equipment, do they share that with the independent auto repair people?

Mr. STANTON. Mr. Murphy, our position is is that—and we made the commitment that independent repair shops would have the exact same service information that we give to all of the dealers as well. Under the EPA regulations, we have to make the same tools available for the aftermarket and diagnostic tools that we make for the dealer. So I do not think there is a difference of positioning there.

Mr. MURPHY. There is not, okay.

Would you agree with that, Mr. Parde?

Mr. PARDE. I am sorry. The question—

Mr. MURPHY. With regard to do people with the more independent mechanics do they feel that they get the diagnostic equipment, the tools, and the parts readily? For example, whether they are subcontracting out or they may be the place that does the body repair work for dealers. Do they get the information and the tools they need?

Mr. PARDE. In some instances yes and other instances no. It is not—in some cases it is not the same information as the dealers are getting or the same tools that the dealers are getting.

Mr. MURPHY. And again that directly contradicts what Mr. Stanton is saying?

Mr. PARDE. Yes.

Mr. MURPHY. Okay. Another question I have for both of you, do dealers charge more for repairs? This was something like you see this on a Seinfeld show and everything else. Someone has—I mean this is the fear that people have. You know, I want to have this widget fixed. If I go to my dealer it is going to cost me X and if I go to somebody else it is going to cost me Y. Is there a significant difference?

Mr. PARDE. Generally it is more expensive to go to a dealership. It ranges, again it varies and depends on what part of the country but it could be as much as a difference between 30 and 70 percent.

Mr. MURPHY. Mr. Stanton, would you agree?

Mr. STANTON. I do not, no.

Mr. MURPHY. And another question the public often times asks are parts, are tools, are procedures, computer programs whatever,

are they invented with the intent of making it so you can only go to a dealer to get the work done?

Mr. STANTON. Not from our point of view, no. As a matter of fact, there is under the EPA regulations we have to make the tools available and we have already committed to make the service information available. It is in our best interest that our customer has a lifetime experience with their vehicle that is a good experience and that includes giving them the option to take the vehicle wherever they want to to have it repaired and repaired well.

Mr. PARDE. Currently, the only protection that the consumer has is on the emissions systems of the car with the EPA regulations. That came from the Clean Air Act which was passed in 1990. The rest of the vehicle does not have that same protection.

Mr. MURPHY. So what other parts are you saying do not have the same protection transmission?

Mr. PARDE. Transmission, brakes, airbags, most other systems on the car do not have the same protection as what you have on the emissions system of the car.

Mr. MURPHY. So for example if someone has an automobile that might be in an accident and the dealer refers that person to have their car repaired at another body shop and with that they need the airbags and the brakes and axel and other things fixed that may—

Mr. PARDE. May not be available, that information may not be able—be available to that independent service technician.

Mr. MURPHY. Mr. Stanton?

Mr. STANTON. We disagree. We made the commitment. We are not hearing that the information is not available. We have set up the NASTF process to deal with any information gaps that there are. We only had 50 inquiries all last year. We do not think it is an issue.

Mr. MURPHY. I mean what I hear from some of my local repair shops that they do say that they have to really push for this, sometimes long waits to get information, that it is not an automatic thing. And of course the consumer is left with extra days for repair time to have those things done. What could be a 1-day job turns into a 1-week job. Is that your understanding, Mr. Stanton?

Mr. STANTON. No, it is not. There is a whole market that has grown up around information, the Alldata's, the Mitchell's and they even have on their website that they can provide all the information within 30 days, excuse me, within 30 minutes. We think that the information is out there.

Mr. MURPHY. Again, but Mr. Parde is saying that the issues about what you are saying EPA requires you to have that information released it is different, we are talking about transmissions, brakes, et cetera are not part of that.

Mr. STANTON. It is true they are not part of that but the manufacturers have all made the commitment, they made it in writing to the Senate in 2002 saying that they would make the exact same service information available to the aftermarket that they make to all their dealers.

Mr. MURPHY. And Mr. Parde, a final comment on that?

Mr. PARDE. Some do, some do not. There is still huge gaps in the information and again only the emission systems of the car have

the protection. There is no oversight and enforcement currently with NASTF. I believe in the last hearing that we had in this committee, the manufacturers testified that it takes on average eight to 15 days to get the information.

Mr. MURPHY. Thank you.

Thank you, Mr. Chairman.

Mr. STEARNS. I thank the gentleman.

Mr. Towns?

Mr. TOWNS. Thank you very much, Mr. Chairman.

Mr. Kohm, let me start with you. You know, you made a statement if I understood you clearly, you said we should build on the success that has been made in the legislation that we consider. Could you explain that, that is not clear to me.

Mr. KOHM. Absolutely Congressman, what the parties had worked on, a dispute resolution, excuse me, mechanism through the NASTF process to quickly and flexibly resolve disputes about information sharing. And that would provide a model if the Congress determines that legislation is necessary to resolve disputes to enact such a process in other words through legislation that is flexible and that is speedy that responds to the market rather than an enforcement court based mechanism.

Mr. TOWNS. All right, thank you very much.

What can we do to get this discussion back on track, right down the line. Is there anything we can do here short of passing this legislation? Right down the line start with you Mr. Stanton and come right down.

Mr. STANTON. You know, during all of this process the demand has been on the manufacturers to provide and to provide and to provide. And we set up and we agreed to enforcement provisions, we agreed to a very quick process to make sure that the manufacturers had an opportunity to cure and we had a dispute resolution at the end of it. And then it came to the governance. And the governance as Mr. Gonzalez said it is not one side against the other in this. ASA used to be on the CARE side and NADA as you know is not always on the manufacturer's side. And the manufacturer is the one that has to do the giving. So we just wanted to make sure and our proposal was is that it should be open to everyone. There ought to be a supermajority that it takes to pass something and we ought to be able to protect the rights of the minority because this is a voluntary group that is designed to work together and work together well and even in our own association we cannot be effective if we have one of our members that is on the left side and everybody else is on the right side and we take a position that does not encompass them so—

Mr. STEARNS. Would the gentleman yield on that?

Mr. TOWNS. Yes, I would be glad to yield to the Chairman.

Mr. STEARNS. If I hear you correctly, you are requiring a supermajority because almost with that you admit that the people you represent are in the minority and are going to be on the wrong side so you need a supermajority to override—

Mr. STANTON. Mr. Chairman—

Mr. STEARNS. I mean that is just ridiculous.

Mr. STANTON. Mr. Chairman—

Mr. STEARNS. I guess I can go to the speaker and say, you know, my friends on the Democratic side are pretty good, you know, when they are unified, it makes my life difficult. I want to supermajority on this committee so that even when I am wrong I can win. I mean that is just horseradish.

Mr. STANTON. Mr. Chairman, Mr. Barton, the way we view this is is that some of the groups that would participate in this other than the Alliance, it would be association run so it is not like we have 15 automobile manufacturers in there but AAIA, ASA, the locksmiths, the training technicians would be there, the service excellence—automotive service excellence groups, automotive service providers would be involved, ETI, MEMA, NADA, SA——

Mr. STEARNS. But they all, everybody, everybody even the manufacturers should represent the consumer, the driver, the person whose vehicle is attempting to be fixed. I mean, I just do not get it. I do not want to take Mr. Towns time and he is one of my principal cosponsors on the minority side but to say you have to have a supermajority on this board I think just is a non-starter.

Mr. STANTON. Not that you have to have a supermajority but the——

Mr. STEARNS. You just said it.

Mr. STANTON. No, it takes——

Mr. STEARNS. You just said it.

Mr. STANTON. [continuing] it takes a supermajority to make a policy decision so that all the rights of all the voluntary participants are protected.

Mr. TOWNS. Let me ask you right down the line real fast and I will switch the question now. Would a larger board do you think solve some of these problems? I am just trying to figure out how you might be able to get back to the table and start negotiating again. Would a larger board, would that be a solution to some of the problems?

Mr. PARDE. Well we felt with our four, four proposal, I mean as Mr. Cole stated in his testimony, there is a lot of mistrust on both sides here and especially in the beginning of this whole process and that is why we thought a four, four board would force us basically to work together to try to find consensus, to find a way to make things happen and that is what we thought would be the best system. Now is a bigger board going to make a difference? You know, I do not know. Sometimes bigger boards bog things down. But we are not opposed to——

Mr. TOWNS. You are bogged down already.

Mr. PARDE. Well we are not even there yet so—but, you know, adding additional people, we are not opposed to that. We never have been opposed to that. The original proposal was to get this organization started and get it moving and get it going.

Mr. STEARNS. Would the gentleman yield just for that question?

Mr. TOWNS. I yield.

Mr. STEARNS. You might, Mr. Towns ask him maybe to have the FTC appoint an independent board and ask him—maybe that is a question we could ask the FTC.

Mr. TOWNS. Yes.

Mr. STEARNS. How about the breakthrough would be that the FTC would point all the directors and there would be an independent board.

Mr. TOWNS. That is a great question, yes.

Mr. COLE. Well Chairman and Congressman it has been suggested that perhaps a solution to this problem would be if each side chose a fairly small but equal number and then that the majority of the board be made up my neutral parties and that may solve the problem of not having exactly equal sides. And that seems like a workable solution to me. I think it would be best if the parties chose people that they thought were truly neutral.

Mr. TOWNS. That is not working. Mr. Parde, I would like to get your answer to that independent board. I would like to hear your response.

Mr. PARDE. I think we would be willing to consider that. I would have to, you know, talk to our coalition members about that but I think that is something we would consider.

Mr. TOWNS. Right. Let me just ask—I know my time has expired but I am going to just quickly ask this. Does it bother you that we are trying to get our nose under the tent, right down the line yes or no?

Mr. PARDE. You have already got your nose under the tent with the emissions part of the car. This would simply be expanding it to include the whole car at this point.

Mr. STANTON. Yes.

Mr. TOWNS. It bothers you?

Mr. STANTON. Absolutely.

Mr. TOWNS. Okay. Mr. Cole?

Mr. COLE. We believe in self regulation.

Mr. TOWNS. Mr. Kohm?

Mr. KOHM. The commission too believes that the solution to this problem is self regulation.

Mr. TOWNS. But, you know, we have been waiting a long time for you guys to work this out and it has not been worked out. I mean, let us face it. I mean 4 years is a long time.

I yield back, Mr. Chairman.

Mr. STEARNS. The gentleman yields back.

Mr. Rogers?

Mr. ROGERS. Thank you, Mr. Chairman.

So it is unanimous we all think we ought not to be here today? Did I understand that correctly?

I just have a quick question, a couple of questions for Mr. Parde, if we will. Does the bill's protections for design and manufacturing trade secrets leave unprotected non-repair related system operating codes in your opinion?

Mr. PARDE. I do not believe so. I mean it does not affect—we do not need propriety information. We are not looking for proprietary information. We took—we put a lot of effort into writing language and putting it into the bill and we even strengthened it from the last session to this session so we are not looking for that. We do not need that. We would not know what to do with it if we had it. We do not manufacture parts. I do not believe that it leaves anything open, any propriety.



Mr. ROGERS. So how would aftermarket manufacturers avoid triggering warning signals if they do not have operating codes?

Mr. PARDE. I am not a technician, Congressman. There will be others on the next panel which will be coming up that can probably best answer that.

Mr. ROGERS. Right. You would agree though given the intellectual property protection this is an issue that we need to be concerned about, would you not? I mean, if I have access to an operating code, it is very—I am not even sure I would have to reverse engineer anymore. I would not even need to do that. I would have all the intellectual property I need.

Mr. PARDE. Intellectual property is an important issue and an important discussion and we feel we have addressed it in the bill.

Mr. ROGERS. But there is that at least gap on operating codes is there not? How would they—I mean you are going to put a piece of equipment in there that was going to trigger warranty—you are going to create more problems than you solve by if they do not have operating codes, they will in fact set off these warning signals. I mean that is a real problem, isn't it?

Mr. PARDE. It potentially could be. Again, we have people on the next panel that will be better to answer that question.

Mr. ROGERS. As long as we can agree that is a problem and that is a debate at least we should have about what intellectual property is infringed on in this bill, at least the potential could be. And we want to do this right. We do not want to take anyone's intellectual property, right?

Mr. PARDE. We are only asking for what the dealers are getting. If the dealers are getting information then it is not proprietary so that is all we are asking for.

Mr. ROGERS. Yes, but if you are you are allowing folks to use elect parts and some of those parts have these operating codes, you would have to get the operating code not to set off the warning signals and if you do that, we—you are asking for them to give proprietary intellectual property that would in fact allow an accelerated reverse engineering process.

Mr. PARDE. I do not believe that is the case. I mean that is not what we are looking for. That is not what we are asking for.

Mr. ROGERS. Well at least that is not what you are looking for then maybe there is some room to fix it but it is absolutely wide open in this bill and that is why we should be very careful about trying to introduce a bill and push a solution to where we are not quite sure there is a problem yet. But I appreciate where you are coming from. I think we are on the same sheet of music. I do not think you want to go there. I certainly do not want to go there. I think it is wide open in this bill to get there and we ought to be really careful about how we look at that language.

Mr. PARDE. I would agree with that. I mean we again we are not after proprietary information. If we need to strengthen the language in the bill to make everybody satisfied or have a comfort level with it we would be willing to do that.

Mr. ROGERS. Thank you, sir.

I would yield back, Mr. Chairman.

Mr. STEARNS. The gentleman yields back.

Mr. Green?

Mr. GREEN. Thank you, Mr. Chairman. I apologize for not being here earlier. I would like to ask unanimous consent to place a statement in the record.

Mr. STEARNS. So ordered.

Mr. GREEN. Just from listening in my office briefly in the hearing, I know there is frustration of a lot of members. And most of us want to get to the point where, you know, when I buy a new car, that car is mine except for when I am paying the notes on it but I ought to be able to take it wherever I want to to have it fixed. And I know we are trying to split the baby in half maybe but that is what we are trying to do.

And Mr. Stanton it seems like both sides say that there would not be a problem with adding members to the board. Would you think that if we added members that may be brought in as Mr. Kohm said that it would help with making those decisions? And I am concerned about supermajorities, too. I know we always want unanimous support but adding new board members that are not part of the aftermarket or part of the automobile manufacturers.

Mr. STANTON. Absolutely, I said—we said earlier we would take back to our members the idea of a totally independent board. We definitely would consider that. We would like the opportunity to consider that an actuality.

Mr. GREEN. Mr. Parde, what do you think about that? Would it be more of an independent board instead of having representatives on both sides on it?

Mr. PARDE. I think we would, you know, we would consider that.

Mr. GREEN. Do we need to do legislation for that?

Mr. STANTON. No, sir.

Mr. GREEN. And I am a cosponsor and like the Chairman said, you know, Congress does not really need to do this if the industries can sit down and do it. And there is a line you have to cross. I know that I want to protect patents and innovation, and everything else but when you sell that product to someone they also have the freedom, should have the freedom to be able to come to the dealer or go to whoever. And I think that is what we are doing and I think if anything you get out of this hearing, unless the industries can work it out for the benefit of the consumers in general, then I think you will see this bill moving and it would be much cheaper if you all sat down and worked it out among yourselves because I tell my constituents once Congress gets in, you know, no telling what will come out. We are the only thing in the world that can make an elephant out of a giraffe. So there is a good Texas saying about our country western song about thank God for unanswered prayers. If—you might want to do this together working it out because if Congress does it then, you know, you may not like what—no side may like what we end up with.

So Mr. Chairman, I thank you for the time and thank you for calling the hearing. I was hoping we would have more success after the legislation last session and the hearings we had that we would have a solution that may be non-legislative but if not I will be glad to continue to co-sponsor and work with Chairman Barton.

Mr. STEARNS. Would the gentleman just yield before your closing?

Mr. GREEN. Be glad to.

Mr. STEARNS. Mr. Kohm, Mr. Green touched upon this independent board. If Congress we structured this and asked you to do it, you could do this, you could set up an independent board, right? Do you have the resources and the manpower to do this?

Mr. KOHM. I do not know that we have ever done that before. We would have—I would have to go back and talk to people at the FTC and see if we could. I think it would be optimal if the parties chose those neutral board members so that they all truly believed they were neutral.

Mr. STEARNS. Well it might be helpful for you to start thinking about it in lieu of legislation and maybe another step would be for you to propose to us how an independent board would be structured, you would appoint them, and then we would come back to you with the instruction to do the same.

Mr. KOHM. We will certainly—I will certainly go back—

Mr. STEARNS. Okay. I yield back to the gentleman, Mr. Green and any additional—

Mr. GREEN. I yield.

Mr. STEARNS. Okay. Mr. Deal is recognized.

Mr. DEAL. Thank you, Mr. Chairman.

Mr. Stanton, there have been testimony, there has been testimony here that certain parts of what you were trying to negotiate have actually be agreed to. Have those provisions that were agreed to actually been implemented?

Mr. STANTON. I said in my testimony that to the—there was a lot that was agreed to that was part of the overall program but what was agreed to as far as providing service information is happening today. Regarding tool and tool information, the vast majority of what was promised there is happening today as well. The manufacturers made the commitment to do that.

Mr. DEAL. Mr. Parde, do you agree with that assessment?

Mr. PARDE. No, I do not.

Mr. DEAL. What is—from your perception what is, what has not been implemented that was agreed to in the negotiations?

Mr. PARDE. I do not believe any of it has been implemented that was agreed to in the negotiations at this point.

Mr. DEAL. Okay. With regard to the magnitude of the problem, I believe some testimony was that there had only been 50 inquiries received through NASTF and that there were some 500 million non-warranty service transactions last year. Do you have any indication, Mr. Parde, as to the magnitude of the number of problems or instances in which the roadblocks exist now in trying to get vehicles repaired?

Mr. PARDE. That is a tough number to get your hands around but, you know, we hear consistently about problems on a daily basis. You know, again going back to the NASTF situation and why there are so few complaints, we think that is because again people just do not trust the system, they do not believe in the system as it exists today. I will give you example of that going back to 2002 before Senate Committee, the Commerce Committee on this legislation or similar legislation. ASA who now is opposed to this legislation but at the time supported it, testified in that hearing that there were 161,437,500 rejected incidents of non-repair that year while at the same time NASTF showed less than 100 complaints

going on at the same time. So you have ASA saying over 161 million incidents of non-repair but NASTF only received 100 complaints.

Mr. DEAL. Mr. Stanton, do you want to respond?

Mr. STANTON. Yes, we got into this at length and I think that is part of the big problem that we are having here is how big of an issue are we really working with. But as a result of the EPA regulations, the manufacturers have to create their own websites and this is another place for technicians to find independent—or to find service information. And our manufacturers are not getting the hits on their websites so in the negotiations I went to one of them that has double digit market share and they have a grand total of 16 annual subscriptions, 16 monthly or excuse me, 16 monthly on a daily basis which goes from 24 to 72 hours, they are averaging about 100 a month. Out of, you know, a half a billion repairs, that is not much use.

Mr. PARDE. Again, I think that goes back to the trust issue. There is not—some of the websites are hard to navigate with, some of them are extensive, some of them are hard to get into. And you have cases where, you know, independent repairs will find their own way to try to get the information however they can get it. Some of them are getting a lot of the information from friends that work at dealerships or under the table. They are not going to take the time to go onto a website that may take them quite a while to try to even find the information.

So again, it is back to the effectiveness of this and how it works and how it operates. And you do not have a large, excuse me you do not have a large segment of the aftermarket industry that supports it right now. There is one organization out of 49 or actually there are 49 groups that support this legislation. Out of those 49, 42 of them are after market groups and one that does not support this legislation and those groups, you know, are simply not participating at this point.

Mr. DEAL. Mr. Kohm, does the FTC have any proposal as to how to resolve the issue of the scope of the information that should be made available? Have you come up with any proposal there?

Mr. KOHM. No, we do not, Congressman.

Mr. DEAL. At some point, somebody has got to make that decision either by agreement or legislatively. Are there concerns that have not been raised here in the testimony thus far that—about that scope of information that you would like to comment on?

Mr. KOHM. No, Congressman, I think through the negotiations this summer and through the testimony that you have now heard exactly what we heard this summer. That I think that there is some considerable agreement on the provision of information, that there is some considerable disagreement on the provision of tool information, although the parties were willing to send that into a NASTF process if they could formulate such a process that they both agreed on and that seems like a workable solution.

Mr. DEAL. Mr. Chairman, my time has expired.

I would yield back.

Mr. STEARNS. The gentleman yields back.

Mr. Rush?

Mr. RUSH. Thank you, Mr. Chairman for this hearing. I really want to comment the response of this legislation for the outstanding work that needs done on this particular issue.

And as I heard the chairman of the full committee, Mr. Barton ask his questions and as I heard the response and as they say my children, young children say sometimes I began to feel him and I was drawn to or it reminded me rather of my mother and some of my young days with my mother. Invariably when I was not doing things to please her, she would always say a word to the wise should be sufficient. And when I did not bring good grades home or I was calling in school she would look at me and with a stern face and very firmly say a word to the wise should be sufficient. Staying out to late, a word to the wise should be sufficient. And I did not realize the meaning of that or I did not take it seriously until I continued in my ways and the punishment was a consequence or the firmness was a consequence. I did some things that I did not want her to do or did not like her doing to me. And I just think that for this—for those who are here, the automobile industry, a word to the wise should be sufficient.

I want to also say that there is a—and I do not want to offend anybody but my colleague from Texas indicated that there was a song but there is another song that brought—that brings—that I am reminded of and it is—and again I do not want to offend anybody but it just keeps reverberating in my head, you know, it is cheaper to keep her. And I think it is also would be much cheaper for the industry to handle this issue themselves without the Congress intervening and without this committee intervening. It would much, much cheaper for you and you would have probably a more successful experience with each other than with the Congress with this committee.

I am concerned about the disparate impact that this may have on small minority businesses. As you know, a self regulating model and we talked about the self regulating model and Mr. Kohm, my question is directed to you. A self regulated model would be best but I am concerned about the time. The time is of the essence and my small business constituents cannot wait for you all to really work this thing out. And so my question is without an independent board, how can we be assured that minority owned dealers, minority owned repair shops, and minority consumers would be adequately protected without having this independent board to oversee this process?

Mr. KOHM. Well Congressman, the optimal solution we believe is an approach that is flexible and an approach that allows for a speedy decision that helps those independent businesses in the marketplace actually repair cars and that a self-regulatory model is one that has that flexibility and that would contain the speed necessary so that repairs could actually get made. The problem with the court process is it is long, it is expensive, it is drawn out and does not provide those pieces that are necessary for small business.

Mr. RUSH. Well, Mr. Cole, I think, might be able to address this. This is regarding an unrelated issue from the matter of concerns right here but it is something that still is important to my constituents. And I am getting complaints and I am not sure if it is war-

ranted or not but I am getting complaints from my constituents that there are codes that is embedded in the computers in these, in some of these vehicles that can be disabled or immobilized to allow these vehicles to be immobilized if for say late payment or non payment of car notes. You know in this area of really trying economic times when someone might fall a month or 2 months behind on their car notes, are you aware of technology that will allow the lender or someone to immobilize their car so that an individual cannot go to work or if they are in an emergency situation need the car and cannot—how is that emergency—are you aware of any type of technology that currently exists that will allow a third party to immobilize a vehicle for non-payments or any other reason?

Mr. COLE. I do not have any information on that other than I have read that same—in the media I had seen reference—

Mr. RUSH. Is there any witness here who might have any insight into this technology?

Mr. STANTON. Mr. Rush limited. I think that technology does exist and generally though it is used for law enforcement and then it is even used very, very judiciously and obviously you do not want to stop a moving vehicle but I think the technology is out there in limited scope.

Mr. RUSH. So this, you know, so the complaints does have some merit in other words that I am getting?

Mr. STANTON. A little bad comes with the good maybe.

Mr. RUSH. Okay. All right, Mr. Chairman, I yield back.

Mr. STEARNS. Yields back.

Mr. Bass?

Mr. BASS. Thank you, Mr. Chairman.

This is a thorny little issue. I feel like I am moderating sort of a fistfight here.

Mr. STEARNS. I know what you mean.

Mr. BASS. Mr. Stanton, is there anything at all in this bill that you support?

Mr. STANTON. We do not think that there is a need for legislation.

Mr. BASS. At all, not anything, we do not need to do a thing, nothing?

Mr. STANTON. We need to solve the problem of making sure that all of the information is out there. That the tool information is there, that the tools are there and we are working to do that and we think that it is better done on a voluntary basis cooperatively than it is through legislation.

Mr. BASS. And what makes you think if it is done on a voluntary basis that anything is going to happen that has not? It has not worked so far, why is it going to work in the future?

Mr. STANTON. I think it is working. I do not think there is any question that from the time of 2000 when the NASTF was created to 2002 when we made our commitment to the implementation of the EPA regs that the information is getting out there.

Mr. BASS. Okay. There is no representative here now from the repair stations. That is the second panel. Is that correct? How about the dealers? Is that the second panel also? Okay, we will defer those questions then because I want to find out what it means to be a dealer because there are costs associated with the

title of being an authorized dealer and I assume you have access to special training and people from the manufacturers come and show you and so you pay, you have a higher overhead and there are more costs associated with the operation of your facility and in return for that, you have to charge more per hour to fix a car but presumably you can boast at least that you have a better, you offer a more reliable repair service because you focus only on the specific make. There—Mr. Parde, is it Parde, is that how you pronounce your last name?

Mr. PARDE. Parde.

Mr. BASS. Parde, Mr. Parde, you represent the aftermarket parts manufacturers, correct, NAPA, that kind of thing?

Mr. PARDE. They are not manufacturers. None of our companies manufacture parts.

Mr. BASS. Okay. And the auto manufacturers are concerned that you might have access to proprietary drawings and that sort of thing. Is that correct?

Mr. PARDE. I believe that is one of their arguments, yes.

Mr. BASS. And—

Mr. PARDE. That is simply not the case. Again—

Mr. BASS. Why is that?

Mr. PARDE. Well again, we do not manufacture the parts, we sell parts, we also do service on vehicles. We do not make the parts. We would not know what to do with the information. I mean we are not after proprietary information. We do not need it and we have stated so in the bill and we have stated so in public and we will continue to say so. And if there is, you know, if the manufacturers wish to work with us on language that would make them feel better and then be willing to then support the bill if that language is put in, we would be happy to do that.

Mr. BASS. When you sell parts, don't you—the parts for a specific brand name of car, do you have to pay anything to the manufacturer for—to say it works on a Ford, or a Chevy, or a Chrysler or it is only if you have the logo of the company on the part?

Mr. PARDE. Any of the parts that we sell at our stores are manufactured by the same people who manufacture the parts for the manufacturer. Many of our parts are boxed with the name of the company or many of our stores offer both what is considered an original part and a generic part so.

Mr. BASS. Okay. Mr. Stanton, do—I apologize, you may have answered this already but do repair stations outside of environmental issues and security issues which we have discussed, do the repair stations have access to all of the same software that the dealers do?

Mr. STANTON. Outside of the security issues, yes, and that was our commitment.

Mr. BASS. And—all right. Amongst other concerns in this bill, you are worried about on Page 5, Line 6, manufacturer's disclosure requirements that repair stations have access to the same diagnostic tools and capabilities. Is that a concern and what is the nature of that concern?

Mr. STANTON. Well our construct of the bill which is better than the last Congress still does not solve the intellectual property issues. The findings are I guess if true, the FTC would probably al-

ready be taking issue with us. It requires the aftermarket parts be accommodated and then combine that with the terms of capabilities in Section 3, you end up with the possibility of someone interpreting the fact that you would have to provide the information for aftermarket parts used in vehicles which gets right to the intellectual property issues.

Mr. BASS. Okay. My time has expired. I am not sure I am any further along this than I was before but it has been helpful, thanks.

Mr. STEARNS. The gentleman yields back.

Ms. Myrick?

Ms. MYRICK. Well like others who have already stated, I would prefer that you all worked this out among yourselves rather than Congress getting involved because we do complicate things.

Mr. STANTON. Yes.

Ms. MYRICK. And who knows what the end result is going to be. But when I sit here and listen to what I have heard so far this morning, you know, Mr. Stanton you say you are giving everything that they need and of course we know the emissions information is mandated by EPA and that is on the websites and so forth. But, you know, if—technically it seems like if you were giving everything that was needed that we would not be here today because the other people would not be saying well we do not have what we need to do the job. So I will listen more but it concerns me, you know, and Ms. Schakowsky, I know suggested maybe setting up something different relative to a panel that could come to some conclusions but I hope you will seriously consider something like that because in all honesty it is not always good when Congress gets involved. I mean if we have to do the job we will. I think you have heard the frustration of most of the people who have spoken about Joe saying 4 years this has been going on and we want to get it solved. I mean, you know, it is kind of like enough is enough. So the more help you can give independently without us having to do it, the better off you all are going to be.

Oh, and I yield back.

Mr. STEARNS. The gentlelady yields back.

Ms. Blackburn?

Ms. BLACKBURN. Thank you, Mr. Chairman and I thank all of you for being here and for your time.

I agree with everybody else. I wish you all could just agree to get along and work it out yourselves.

Mr. Parde, I do want to talk with you for just a moment. You just made a statement a few moments ago that we just—regarding the aftermarket parts and the intellectual property that is used in those parts. And you said well if we had the information we would not know what to do with it. And I would caution you sir, or ask you to use caution there are lots of people out there that would know exactly what to do with that information.

Now when I was in the State Senate in Tennessee, I represented a little place called Spring Hill with a little plant called Saturn, part of GM. I live in Williamson County, Tennessee and we expect to have a new constituent called Nissan. So I will caution you, sir, that in my life as a marketer and in my private life before coming to Congress, I did a good bit or work with the retail industry and



I saw intellectual property and piracy and theft decimate an industry. I represent the world's largest community of songwriters and it just kills me to see what intellectual property theft is doing to that industry. Information on the wrong hands does great damage to the U.S. economy and I would just ask you, please to be aware of that.

Now with that said, have a tremendous number of shade tree mechanics and small repair shops that make up my wonderful district that goes from Nashville to Memphis, Tennessee, Mr. Stanton do you—we have talked a lot about information and I question your response on your website with saying you have only had the 50 inquiries. I think availability, ease of access to information, those things are very important. And I would want to know, I want to hear from you if I have a shop in Summer, Tennessee that is trying to repair a 2005 Mountaineer are they going to be able to get the information, the tools easily accessible so that those owners of that vehicle are not forced to drive to either Jackson or Memphis or Nashville? Are they guaranteed that they can do that?

Mr. STANTON. There is not a guarantee but if they have a 2005 vehicle it should be covered under warranty and other than routine service would go back to the dealer anyway. I know we have had this discussion before and your shade tree mechanics would encourage that as well. Under the EPA guidelines though once a vehicle is out in the marketplace for 6 months, all of the emissions information has to be made available, tools have to be made available. Ms. BLACKBURN. Okay, all right. I get the drift.

Mr. STANTON. Okay.

Ms. BLACKBURN. Thank you, sir.

Watching my time here, Mr. Kohm, looking at this from consumer protection is there anything that you view as anti-competitive in the current market or would you foresee with the growth of technology future anti-competitive behavior if the current regulations are not changed?

Mr. KOHM. I do not know that I can see to foresee the future in a rapidly changing market. However this is a market with a number of competitors and no collusion that we know of. That seems like an official——

Ms. BLACKBURN. That is all I want to know.

Mr. Cole, I wish you well. You have a big job. And I thought it was interesting in your testimony it looks like that you feel like there was progress on the first and second steps. Am I correct in that? And the third—so just let me ask you that.

Mr. COLE. Yes.

Ms. BLACKBURN. So by saying, making your statement in your testimony about the first and second steps, I assume that you believe that there is agreement or resolution that could be arrived at there.

Mr. COLE. I do, let me clarify. The assignment originally given was characterized can you help facilitate the creation of the dispute resolution program. That took very little time to do. But the parties were smart enough to realize that the NASTF process and how that was governed was as important and so all the discussion about the independent board or another kind of board and all those

conversations we have been having are about a set of issues that were not on the table before.

Ms. BLACKBURN. Okay. My time has expired. I will just say I really do honestly believe you all would like to resolve this yourselves and not have us resolve it for you so I wish you all well.

Mr. Chairman, I yield back.

Mr. STEARNS. The gentlelady yields back. If not, we will now thank the Panel #1 and ask the members of Panel #2 to come forward. I thank you folks.

Panel #2 we have John Nielsen, Director AAA Auto Repair Network; Mr. Steve Brotherton, President of Continental Imports. He is here on behalf of the automobile, the Automotive Service Association. Mr. Robert Everett, Owner, Bayville Auto Care on behalf of the National Federation of Independent Business; Mr. John Cabaniss, Director, Environmental Energy Association of International Automobile Manufacturers; Mr. Aaron Lowe, Vice President, Government Affairs, Automotive Aftermarket Industry Association; and finally Mr. Robert Braziel, Chief Legislative Counsel, National Automobile Dealers Association.

Let me welcome each of you folks here and Mr. Nielsen, we will start out with your opening statement and just move the mike close to you and if you do not mind, just turn it on.

**STATEMENTS OF JOHN NIELSEN, DIRECTOR, AAA AUTO REPAIR NETWORK; STEVE BROTHERTON, PRESIDENT, CONTINENTAL IMPORTS; BOB EVERETT, OWNER, BAYVILLE AUTO CARE, INCORPORATED; JOHN CABANISS, DIRECTOR, ENVIRONMENT & ENERGY, ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INCORPORATED; AARON M. LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS, AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION; AND ROBERT BRAZIEL, CHIEF LEGISLATIVE COUNSEL, NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

Mr. NIELSEN. Thank you, Mr. Chairman.

I am pleased to be here today on behalf of AAA in support of H.R. 2048, the Motor Vehicle Owners' Right to Repair Act.

My name is John Nielsen. I am the director of AAA's Auto Repair Network and my primary responsibility in that role is to make certain that AAA members are able to locate quality repair facilities that can quickly and efficiently service their vehicles at a reasonable and competitive cost. I coordinate the objective inspection and approval of a network of more than 7,500 repair facilities. These represent both new and non-new car dealerships. We have independent and aftermarket.

AAA has represented the interests of car owners for over 100 years and currently serves more than 48 million members. That represents one quarter of U.S. households. We support Right to Repair as a necessary measure to ensure our members' safety and their access high quality, convenient, and competitively priced auto repair.

In supporting this bill, AAA's goal has been to ensure that manufacturers make service and training information, as well as, the appropriate diagnostic tools available to any repair facility not just those franchised dealers. Ideally, this should occur voluntarily and

we were disappointed that the issues associated with right to repair could not be resolved through self-regulating programs. Absent that we remain committed to the need for legislative action.

Our members and many independent repair facilities in AAA's approved auto repair network continue to tell us of instances where technicians do not have the information or tools they need to fix today's vehicles. It is difficult to quantify the extent of a problem because a customer focused repair shop will always find a way to take care of their customer and not lose them forever.

In many cases, the problem is transparent the shop is taking care of the problem whether they are going to a dealership and paying under the table for information, whether they are actually taking the car to the dealership for information remains transparent to the consumer. But the fact that the independent technicians have to go through a number of steps, some of them certainly not what we would consider normal. It is not in the consumer's best interest.

Problems do persist and customers are denied choice among quality and qualified repair options. They are inconvenienced and regrettably some AAA members are left with no choice but to drive their vehicle long distances for repairs and service. Consumers are essentially denied something they buy when they drive their new car off of the lot and that is access to the data necessary to get their vehicles repaired.

AAA's support for the Right to Repair Bill is based on three simple yet very important objectives. The first is consumer choice, the second is vehicle safety, and the third is the right of car owners to access or have access to the data generated by their vehicles. Despite some positive steps toward making more information available to independent repair facilities much of what is provided is incomplete, difficult to find, or prohibitively expensive. As a result, instead of fixing the problems themselves, some repair technicians are forced to put customers back out on the road searching for a dealer shop that may not have an available appointment, may not be nearby, or may not even be opened.

Many of our members prefer to use dealer facilities. In no way do we say that aftermarket or dealer is a better solution. But as I say, many of our members choose dealer facilities and many choose the services offered by independent facilities. AAA believes our members deserve and need choice to ensure good quality service and a fair price in auto repair. And this can only occur if all facilities have access to the same information and tools.

Technology has made the vehicles we drive smarter. More than 80 percent of the systems on some cars are monitored or controlled by a computer. Computers in the car can tell us of the need of an oil change, trouble with an oxygen sensor, or problems with brakes, and even if our tire pressure is too low. And it can do this before there is actually a problem with a vehicle. It makes sense that the information necessary to diagnose and repair any of these problems should be available to all repair technicians both within and outside of the dealer's network.

These days it is hard to mention this issue without someone telling you of their own experience with a repair problem. I would like to present you with a scenario that typifies what we hear. Imagine

traveling on a Saturday afternoon, the dashboard light comes on in your vehicle and warns you that there is a malfunctional problem with your antilock braking system. You stop at the first service station and ask for help. The technician checks the vehicle and determines the vehicle is not mechanical but rather is an electrical system that he does not have access to. The closest dealer for that make of car is 25 miles away. And by the way, it will not open until Monday morning. Is it safe to keep driving the vehicle on your trip or should you drive it to the repair shop and wait until Monday. Or really is it safe to drive at all, should you simply have a tow truck pick it up and take it to the shop. Can the dealer service the car Monday or are they booked until midweek?

This situation could just have easily involved supplemental restraints, electronic traction and stability control, airbags, et cetera. Each has the potential to compromise the safety of the vehicle's owner and the vehicle's passengers, as well as, other motorists. At the same time, the inability of independent technicians to repair comfort features like climate control may not create dangerous situations but they can certainly cause inconvenience for motorists.

AAA believes that when you drive off the lot with your car, you own more than just the vehicle, you own the information necessary to have it repaired by a trusted service provider of your choosing. That is why there is an independent technician or a dealership. To the extent that the manufacturers contend that certain information is not available because it should be considered intellectual property, we need to look no further than the clear language of H.R. 2048 which states that manufacturers do not have to disclose any propriety design information. At the same time, whether it is viewed as intellectual property or real property, this repair information is really the property of the car owner.

Simply put, this legislation is about putting common sense into the repair process, ensuring that consumers get a choice in repair service whether they choose a dealership or an independent shop.

I thank you very much for the opportunity to share AAA's views on this important issue. I would be happy to answer any questions. [The prepared statement of John Nielsen follows:]

PREPARED STATEMENT OF JOHN NIELSEN, DIRECTOR, AAA AUTO REPAIR NETWORK

Thank you, Mr. Chairman and members of the subcommittee. I am pleased to be here today on behalf of AAA in support of HR 2048, the Motor Vehicle Owners' Right to Repair Act.

My name is John Nielsen. I am the director of AAA's Auto Repair Network. My primary responsibility is to make certain AAA members are able to locate quality facilities that can quickly and efficiently service their vehicles at reasonable cost. I coordinate the objective inspection and approval of a network of more than 7500 AAA-approved repair facilities that are both franchised new car dealerships and independently-owned repair shops.

AAA has represented the interests of car owners for over 100 years, and currently serves more than 48 million members' a quarter of all U.S. households. We support Right to Repair as a necessary measure to ensure our members' safety, and their access to high quality, convenient, and competitively priced auto repair.

In supporting this bill, AAA's goal has been to ensure that manufacturers make service and training information, as well as the appropriate diagnostic tools, available to any repair facility, not just those in a franchised dealer network. Ideally, this should occur voluntarily. We were disappointed that the issues associated with Right to Repair could not be resolved through a self-regulatory program. Absent that, we remain committed to the need for a legislative solution.

Our members and many independent repair facilities in AAA's approved auto repair network continue to tell us of instances where technicians do not have the information or tools they need to fix today's vehicles. It's difficult to quantify the extent of the problem because a customer-focused repair facility always will find ways to work around a situation in order to minimize customer frustration. In many cases the problem is transparent to the consumer. But the fact that independent technicians frequently have to go through multiple steps searching for information they need to repair a customer's car is not in the consumer's best interest.

Problems do persist and consumers are denied choice among qualified repair options; they are inconvenienced, and regrettably some AAA members are left with no choice but to drive their vehicle long distances for repairs. Consumers are essentially denied something they buy when they drive their new car off the lot—access to the data necessary to get their vehicle repaired.

AAA's support for the Right to Repair bill is based on three important objectives: consumer choice, vehicle safety, and the right of car owners to access the data generated by their vehicle.

Despite some positive steps toward making more information available to independent repair facilities, much of what is provided is incomplete, difficult to find, or prohibitively expensive. As a result, instead of fixing the problem themselves, some repair technicians are forced to put customers back out on the road searching for a dealer shop that may not have an available appointment, may not be nearby, or may not even be open.

Many of our members prefer to use dealer facilities. But, many choose to use the services of independents. AAA believes our members deserve and need choice to ensure good quality service and a fair price in auto repair. This can only occur if all facilities have access to the same information and tools.

Technology has made the vehicles we drive smarter. More than 80% of the systems on some cars are monitored or controlled by a computer. Computers in the car can tell us about the need for an oil change, trouble with an oxygen sensor, problems with brakes, and even if our tire pressure is too low—before there is a problem or critical safety breakdown. It makes sense that the information necessary to diagnose and repair any of these problems should be available to all repair technicians, both within and outside of dealers' networks.

These days, it is hard to mention this issue without someone telling you of their own experience with a repair problem. Here is a scenario representative of what we hear: Imagine traveling on a Saturday afternoon. The dashboard light comes on warning of a malfunction with the antilock brake systems. You stop at the first service station and ask for help. The technician checks the vehicle and determines the problem is not mechanical, but rather, is in an electrical system only the dealer has access to. The closest dealer for your make of car is 25 miles away and won't open until Monday morning. Is it safe to keep driving the car on the trip? If not, is it safe to drive the car to the dealer and wait until Monday, or do you need a tow truck to pick up the car? Can the dealer service the car Monday, or are they booked until later in the week?

This situation could just as easily have involved the supplemental restraint system, or the electronic traction and stability control system. Each has the potential to compromise the safety of the vehicle's owner and passengers and other motorists as well. At the same time, the inability of independent technicians to repair "comfort features" like climate control may not create dangerous situations, but they can certainly cause inconvenience for motorists.

AAA believes that when you drive off the lot with your car, you own more than just the vehicle; you own the information necessary to have it repaired by a trusted service advisor of your choice, whether it is an independent technician or dealership. To the extent that the manufacturers contend that certain information is not available because it should be considered intellectual property, we need to look no further than the clear language of HR 2048, which states that manufacturers do not have to disclose any proprietary design information. At the same time, whether it is viewed as intellectual property or real property—this repair information is really the property of the car-buyer.

Simply put, this legislation is about putting common sense into the repair process, ensuring that consumers get a choice in repair service, whether they choose a dealership or an independent.

Thank you for the opportunity to share AAA's views on this important consumer issue. I will be happy to answer any questions at this time.

Mr. STEARNS. Thank you.

Mr. Brotherton, welcome.

# STATEMENT OF STEVE BROTHERTON

Mr. BROTHERTON. Good morning, Chairman Stearns, Members of the subcommittee, my name is Steve Brotherton.

Mr. STEARNS. I just need you to turn your mike on and just pull it a little bit closer to you if you do not mind. Yes, perfect.

Mr. BROTHERTON. Again, my name is Steve Brotherton. I am the President and owner of Continental Imports in Gainesville, Florida. I have owned my own repair facility since 1978. We are a European specialty shop servicing mainly Mercedes and BMW. I hold a Bachelor of Science from the University of Florida in Metallurgical Engineering and have served as President of the Automotive Service Association's local chapter in Gainesville, Florida. I am a contributing editor for Import Car Magazine and serve as Vice President of the IAI BMW SP, an internet technician group for BMW's.

I am here representing the Automotive Service Association, our national trade association. ASA is the oldest, largest trade organization in the automotive industry with the distinction serving only businesses that perform service and repairs for the motoring public. ASA's Board of Directors is made up of independent repair shop owners, small business men and women. I repair automobiles.

ASA has testified before the Congress including this subcommittee on several occasions regarding the automotive service information issue. Prior to the fall of 2002, we believed there was a problem in obtaining service information from automotive manufacturers. In September 2002, ASA signed a voluntary agreement with the Automotive Service Manufacturers asserting the same emissions and non-emissions related service information, training information, diagnostic tools as provided franchised new car dealers. The automakers have kept this commitment in my estimation. Reports from the aftermarket equipment and tool industry indicate that our industry is receiving more technical information from automakers than ever before.

In order to deal with issues that may arise with service, training, and tool information, the automotive industry established the National Automotive Service Task Force, NASTF. This inclusive voluntary organization involves automakers, independent repair shop owners, technicians, aftermarket information providers, trainers, aftermarket manufacturers, distributors and others interested in moving our industry forward. The NASTF meets twice a year. Committees specializing in problem solving work throughout the year on issues such as NFS systems, service information, training, communication and tool information.

At the NASTF's meeting during the automotive industry week this past week, participants voted overwhelmingly to set up a formal structure and hire professional staff for the NASTF. There were more than 200 attendees at the NASTF meeting. Last year NASTF received 48 complaints regarding service, training, and tool information. All 48 complaints were resolved. Please note these—I also put two of those complaints. Please note that these complaints pale in the light of the 451 million repairs handled by independent repairers each year. Independent repairs perform 75 percent of automotive repairs. Typically these repairs occur after the vehicle warranty period has expired.

ASA participated in the recent Better Business Bureau meetings arranged by the Federal Trade Commission on service information. ASA found the meetings productive and was sorely disappointed when the talks did not result in resolution of the right to repair debate. ASA believes the October 3, 2005 Better Business Bureau letter to the FTC is an accurate depiction of the discussions. ASA agrees that the resolution was possible on core issues such as strengthening and new funding of the NASTF process; remedies for a third party dispute resolution framework; timeframes for problem resolution; and dispute resolution procedures.

ASA references the restructuring and governance issues as the primary reason the talks failed. Auto parts distributors insisted that any NASTF board of directors be comprised of 50 percent parts distributors and 50 percent automakers. This concerned ASA for several reasons. First, the principle participants in this debate should be independent repairers and automotive manufacturers not parts distributors. Second, NASTF is a voluntary industry organization. No closed facilitation process should dictate governance standards for any organization in existence for several years operating successfully. How frustrating it might be for those industry leaders toiling in the last several years to resolve industry, service, training, and tool concerns to learn that their lawyers, lobbyists, and Government bureaucrats who have not intended or participated in NASTF have now established a structure and board of directors for this same organization.

I would advocate this morning that out industry, post Clean Air Act Amendment of 1990 had a serious service information problem. At the urging of congressional leaders, we met with our adversaries, the automakers, and realized we had more in common than we realized. We agreed on an industry solution after extensive dialog. Our September 2002 agreement has been successful. Is it perfect? No. With nearly 500 million vehicle repairs a year, the NASTF is a necessity for assuring that information gaps caused by new technology are resolved in an environment of problem-solving, not regulation and litigation.

ASA believes we have an agreement with the automakers that is working in today's highly technical environment. The NASTF is an industry process allowing us to work together in an environment of problem solving versus regulation and litigation. Please allow us to continue to move our industry forward working together. We do not need Federal intervention in the service information issue. We should know we successfully repair vehicles every day and are the beneficiaries of these efforts.

If our voluntary, industry service information process fails, we will be the first to be asking Congress—we will be the first to line up asking Congress' help. We see no signs of failure to date.

Thank you for allowing us to testify again before your committee.  
[The prepared statement of Steve Brotherton follows:]

PREPARED STATEMENT OF STEVE BROTHERTON, CONTINENTAL IMPORTS, ON BEHALF OF AUTOMOTIVE SERVICE ASSOCIATION

Good Afternoon Chairman Stearns, Members of the Subcommittee, my name is Steve Brotherton. I am the President and owner of Continental Imports in Gainesville, Florida. I have owned my own repair facility since 1978. We are a European specialty shop servicing primarily BMW's and Mercedes. I hold a Bachelor of

Science from the University of Florida in Metallurgic Engineering and have twice served as President of the Automotive Service Association's (ASA) Local Chapter in Gainesville, FL. I am a contributing editor for Import Car Magazine and serve as Vice President of IAI BMW SP an internet technician group for BMW.

I am here today representing the Automotive Service Association (ASA), our national trade association. ASA is the oldest and largest trade organization in the automotive industry with the distinction of serving only those businesses that perform service and repairs for the motoring public. ASA's Board of Directors is made up of independent repair shop owners, small business men and women. I repair automobiles. This is indicative of my business' mission statement and that of my trade association.

ASA has testified before the Congress, including this Subcommittee, on several occasions regarding the automotive service information issue. Prior to the fall of 2002, we believed there were problems in obtaining service information from automobile manufacturers. In September 2002, ASA signed a voluntary agreement with the automobile manufacturers assuring the same emission and non-emission related service information, training information and diagnostic tools as provided franchised new car dealers. The automakers have kept their commitment. Reports from the aftermarket equipment and tool industry indicate that our industry is receiving more technical information from automakers than ever before.

In order to deal with issues that may arise with service, training and tool information, the automotive industry established the National Automotive Service Task Force. This inclusive, voluntary organization involves automakers, independent repair shop owners, technicians, aftermarket information providers, trainers, aftermarket manufacturers, distributors and others interested in moving our industry forward. The NASTF meets twice a year, and committees specializing in problem-solving work throughout the year on issues such as anti-theft systems, service information, training, communication and tool information. At the NASTF's meeting during Automotive Industry Week this past week, participants voted overwhelmingly to set up a formal structure and hire professional staff for the NASTF. There were more than 200 attendees at the NASTF meeting.

Last year, the NASTF received 48 complaints regarding service, training and tool information. All 48 complaints were resolved. Please note that these complaints pale in light of the 451 million repairs handled by independent repairers each year. Independent repairers perform 75 percent of automotive repairs. Typically these repairs occur after the vehicle warranty period has expired.

ASA participated in the recent Better Business Bureau (BBB) meetings, arranged by the Federal Trade Commission (FTC), on service information. ASA found the meetings productive and was sorely disappointed when the talks did not result in the resolution of the Right to Repair debate. ASA believes the October 3, 2005, BBB letter to the FTC is an accurate depiction of the discussions.

ASA agrees that resolution was possible on core issues such as:

- Strengthening and new funding of the NASTF process.
- Remedies for a third-party dispute resolution framework.
- Time frames for problem resolution.
- Dispute resolution procedures.

ASA references the restructuring and governance issue as the primary reason the talks failed. Auto parts distributors insisted that any NASTF Board of Directors would be compromised of 50% parts distributors and 50% automakers. This concerned ASA for several reasons. First, the principle participants in this debate should be independent repairers and automobile manufacturers, not parts distributors. Second, the NASTF is a voluntary, industry organization. No closed facilitation process should dictate governance standards for an organization in existence for several years, operating successfully. How frustrating it might be for those industry leaders toiling for the last several years to resolve industry service, training and tool concerns to learn that lawyers, lobbyists and government bureaucrats, who have not attended or participated in the NASTF, have now established a structure and Board of Directors for this same organization. The message would resonate throughout the automotive repair industry, "We are the FTC and we are here to help."

I would advocate this morning that our industry, post Clean Air Act Amendments of 1990, had a serious service information problem. At the urging of congressional leaders, we met with our adversaries, the automakers, and realized we had more in common than we realized. We agreed on an industry solution after extensive dialogue. Our September 2002 agreement has been successful. Is it perfect? No. With nearly 500 million vehicle repairs a year, the NASTF is a necessity for assuring that information gaps caused by new technology are resolved in an environment of problem-solving, not of regulation and litigation.



ASA believes we have an agreement with the automakers that is working in today's highly technical environment. The NASTF is an industry process allowing us to work together in an environment of problem-solving versus regulation and litigation. Please allow us to continue to move our industry forward, working together. We do not need federal intervention in the service information issue. We should know, we successfully repair vehicles everyday and we are the beneficiaries of these efforts.

If our voluntary, industry service information process fails, we will be the first in line asking for the Congress' help. We see no signs of failure to date.

Thank you for allowing us to testify again before your Committee.

Mr. STEARNS. Thank you, Mr. Brotherton.  
Mr. Everett?

#### **STATEMENT OF BOB EVERETT**

Mr. EVERETT. Good afternoon. Mr. Chairman and members of the subcommittee, I am Bob Everett, owner of Bayville Auto Care in Bayville, New Jersey. I am here on behalf of the 600,000 members of the National Federation of Independent Business. NFIB represents over 24,000 small automotive repair shops like mine and they strongly support H.R. 2048, the Motor Vehicle Owners' Right to Repair Act of 2005. When NFIB asked its members in January of 2003 if automobile manufacturers should be required to disclose to car buyers and repair shops information needed to repair or maintain their vehicles, 77 percent of NFIB members said yes.

In addition to the 24,000 NFIB members who own independent garages, there are many other small business groups that support H.R. 2048 including the Alliance of Automotive Service Providers, the service station dealers, the Tire Industry Association, and the automatic transmission rebuilders. Together, they and others bring over 30,000 additional small businesses to the table all in full support of H.R. 2048. I am also a member of the Automotive Service Association and I feel that it is important for the subcommittee to know that ASA does not speak for all repair shop owners. I am one of many ASA members that disagree with our association's position on this issue.

I was fortunate to be able to participate in the recent negotiations at the invitation of CARE and AAIA. It should be noted that I was the only repair shop owner and technician to participate in these meetings. There are three issues from those negotiations which I would like to briefly address.

Opponents to this legislation like to say that NASTF has eliminated the need for this bill. We disagree. NASTF has received very few complaints because it has proven to be clumsy and ineffective. NASTF considers an incident closed once any response is received by the person that makes the initial complaint regardless of whether it helps solve the problem. The industry has recognized the futility of this venture. You have heard today that NASTF has worked so well that the industry has decided to formalize the organization with new structure. I would make the argument that it has not worked which is why it needs new structure. NASTF's mission does not include oversight and enforcement and does little to help a technician get his customer's vehicles fixed in a timely manner.

As in much of this world, most people need to know what is in it for me. It is perceived that there is nothing in NASTF for the average technician and the process is extremely frustrating. Also, the leadership of NASTF is dominated by opponents of this legisla-

tion leading to the organization to be used extensively in the political arena. This would have to drastically change for the group to gain credibility. All of these factors combined to make a perception of NASTF as a waste of time. Perhaps that is unfair but it is reality. H.R. 2048 will provide the enforcement mechanism needed to fix the problem.

The issue of tool information was another major sticking point and it has become very clear in the real world that the accessibility to diagnostic tools at a reasonable cost is a key factor. Paying \$25 to \$100 for a piece of information is useless if I cannot get the tools needed to make it work. Our efforts during the negotiations were to have the OEM's agreed to release information to tool manufacturers needed for them to develop the appropriate diagnostic tools. We were willing to let open competition in the marketplace control the prices of tools for our repair shops and ultimately the cost of related repairs for the consumer.

Security issues were also a significant area of disagreement. We are not just talking about making keys for vehicles. With modern computer technology, all systems are becoming interrelated. If the vehicle does not start due to a malfunctioning security system, a repair shop needs access to determine exactly the cause whether it was from a faulty key, an ignition switch, security module, or other item. Furthermore, because of the relationships between various components in the modern vehicle, security information is needed to properly make each item recognized or talk to the other. To put it simply, if the dealer techs need this information to repair a vehicle and they do, so do we. There are many ways to ensure security on the modern vehicle and our industry would be willing to work with the OEM's on solving this issue, but to date they have not agreed to give us this information.

H.R. 2048 is based on a consumer's right to repair a vehicle that he or she purchased and it will ensure that this right remains as automotive technology continues to evolve. Enacting this bill into law will be a dual victory for small business and the consumers they serve each day. Thank you for the opportunity to testify.

[The prepared statement of Bob Everett follows:]

PREPARED STATEMENT OF BOB EVERETT, OWNER, BAYVILLE AUTO CARE, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman and members of the Subcommittee, I'm Bob Everett, owner of Bayville Auto Care in Bayville, New Jersey. I'm here on behalf of the 600,000 members of the National Federation of Independent Business (NFIB). NFIB represents over 24,000 small automotive repair shops like mine, and they strongly support H.R. 2048, the Motor Vehicle Owners Right to Repair Act of 2005. When NFIB asked its members in January of 2003 if "automobile manufacturers should be required to disclose to car buyers and repair shops information needed to repair or maintain their vehicles," 77% of NFIB members said "yes".

As a small business owner, I have been involved in the car repair business since 1974. I established Bayville Auto Care in 1986, and began my career at a family owned gasoline service station. Currently, I am the immediate past president of the Alliance of Automotive Service Providers of New Jersey, an industry trade association representing over seven thousand service providers nationally. Included among my many certifications, I received the 2000 NAPA/ASE Certified Automotive Technician of the Year award, the most prestigious in our industry.

The Motor Vehicle Owners Right to Repair Act attempts to address an inequity in the car repair market by guaranteeing consumers the right to choose how and where they have their vehicles repaired. As more and more of a vehicle's functions are controlled by onboard computers, independent repair facilities have found it

more difficult to obtain the information necessary to repair their customer's cars. When this information cannot be obtained from the manufacturers, NFIB members find themselves in the difficult position of having to tell their customers they are unable to make repairs and refer them to a local dealer.

In addition to the 24,000 NFIB members who own independent garages, there are many other small business groups that support H.R. 2048. The Automotive Aftermarket Industry Association (AAIA), the Service Station Dealers (SSDA), the Tire Industry Association (TIA) the Automatic Transmission Rebuilders (ATRA) and the Automotive Engine Rebuilders Association (AERA) bring over 30,000 other small businesses to the table, all in full support of HR 2048. I am also a member of the Automotive Service Association, and I feel that it is important for the Subcommittee to know that ASA does not speak for all repair shop owners.

I was fortunate to be able to participate in the recent negotiations at the invitation of CARE & AAIA. There are three issues from those negotiations, which I would like to briefly address. It should also be noted that I was the only shop owner and technician to participate in these meetings.

Opponents to this legislation like to say that the National Automotive Service Task Force (NASTF) has eliminated the need for this bill. We disagree. NASTF has received very few complaints because it has proven to be clumsy and ineffective. NASTF considers a complaint closed once any response, regardless of whether it helps, is received by the person that makes the initial complaint. The industry has recognized the futility of this venture. NASTF's mission does not include oversight and enforcement and does little to help a technician get his customers vehicle fixed in a timely manner. As in much of this world, most people need to know "what's in it for me". It is perceived that there is nothing in NASTF for the average technician and the process is extremely frustrating. The leadership of NASTF is dominated by opponents of this legislation and this has to change for the group to gain credibility. All of these factors combine to make the perception that NASTF is a waste of time. Perhaps that is harsh, but it is reality. HR 2048 will provide the enforcement mechanism needed to truly fix the problem.

The issue of tool information was also a major sticking point. It has become very clear in the real world that the accessibility, at a reasonable cost, to diagnostic tools is a key factor. Paying \$25- \$100 for a piece of information is useless if I can not get the tools needed to make it work. Our efforts during the negotiations were to have the Original Equipment Manufacturers (OEMs) agree to release the information to tool manufacturers needed for them develop the appropriate diagnostic tools. We were willing to let open competition in the market place control the prices of tools for our shops and, ultimately, the cost of related repairs for the consumer.

Security issues were also major issues of disagreement. We are not just talking about making keys for vehicles. With modern computer technology, all systems are becoming interrelated. If the vehicle does not start due to a malfunction in the security system, we need access to determine exactly the cause, whether it is from a faulty key, ignition switch, security module or other item. Furthermore, because of the relationships between various components in the modern vehicle, security information is needed to properly make each item recognize or "talk" to the other. To put it simply, if the dealer tech needs the information to repair a vehicle (and they do), so do we. There are many ways to insure security on the modern vehicle, and our industry would be willing to work with the OEMs on solving this issue, but to date they have not agreed to give us the information.

Restoring competition to the marketplace is good for the consumer and good for small business. It is very important to note that H.R. 2048 does not require auto manufacturers to disclose any trade secrets or proprietary information, and NFIB members are not asking for that. They do, however, insist on level playing field. We are not looking for a competitive advantage over the manufacturers or dealers—we just want to be able to serve our customers and run our businesses.

H.R. 2048 is based on a consumers' right to repair a vehicle that he or she purchased, and will ensure that this right remains as automotive technology continues to evolve. Enacting this bill into law would be a dual victory for small business and the consumers they serve each day. Thank you for the opportunity to testify.

Mr. STEARNS. Thank you very much, Mr. Everett.  
Mr. Cabaniss?

#### STATEMENT OF JOHN CABANISS

Mr. CABANISS. Good morning—  
Mr. STEARNS. Cabaniss, sorry.

Mr. CABANISS. That is okay. I have heard—that has been done a lot worse than that.

Good morning, Mr. Chairman and members of the subcommittee. I am John Cabaniss and I am speaking today for the Association of International Automobile Manufacturers. I have been with AIM for 10 years, prior of that I worked for EPA for 15 years. For 5 years, I have served as the Chairman of the National Automotive Service Task Force, a voluntary cooperative activity involving the auto service industry, the equipment and tool industry, and automakers.

During August and September, AIM participated in the facilitation meetings hosted by the Better Business Bureaus. Personally, I attended only the first meeting but I worked closely with our team throughout the process. I have been involved in vehicle service issues for over 40 years and involved in the so called right to repair issue even before legislation was introduced 5 years ago.

I have testified several times on right to repair legislation. It was very clear throughout the facilitation process that the two sides agree on most issues. All parties are pro consumer choice all parties support the aftermarket service providers, information providers, the training providers, and the tool companies. All parties generally agree the current NASTF process is working effectively. Automakers already make all service and training information available to all technicians via the internet at the same time it is available to dealers. Why do we do this? Because no automaker wants a reputation for producing vehicles that are difficult to repair or which can only be serviced at specific sometimes inconvenient locations.

With all due respect, we believe that proponents of this bill fail to appreciate this basic built in market incentive for the dissemination of service and repair information. We support a cooperative approach that allows all stakeholders to be involved in developing workable solutions and addressing new issues that given the face of technological change are certain to emerge. It may be tempting to think there are only two principal groups concerned about these issues, automakers on the one hand and those that are represented by CARE on the other. In fact, there is a much larger group of stakeholders involved including tool companies, the independent information providers, the training providers, technicians, shop owners, dealers, locksmiths, and so on.

A viable NASTF program which all parties agree should be the centerpiece of a voluntary solution must be open to all stakeholders. This is the case today. Automakers already work with tool companies to facilitate the transfer of tool related information. Automakers already offer for sale to independent shops all factory tools available to dealers. Automakers already work with independent training providers to address any training issues. Other work in progress includes developing a way to deal with security related information and addressing some issues related to collision repairs. If any gaps are identified, automakers will work within the NASTF process to address them.

The formalization of NASTF has been under serious consideration since the April general meeting. NASTF has been successful for 5 years operating as a group of volunteers sharing a common

mission. But its activities have grown to the point where some full-time staff support is needed. A proposal for a 3-year transition period to establish an organization with a full-time staff and budget was submitted in mid-August. A special NASTF stakeholder meeting was held in October to discuss the proposal and at the November 2 general meeting there was support, a general vote of report called with no descending votes.

For the record, automakers oppose H.R. 2048 because we believe legislation is unnecessary and counterproductive. The types of problems identified by proponents such as the cost of accessing automaker websites, format differences in websites, occasional content errors and lack of enforcement are not issues which will be effectively addressed in regulations. The current automaker websites and cost structure are based on EPA regulations. It is unlikely the FTC would conclude any significant changes are needed. Occasional content errors are addressed through a process of continuous improvement with or without regulation. And Federal regulatory and enforcement processes are laden with procedural steps which do not lend themselves to addressing problems quickly. The only thing that further regulation would clearly do is slow down the process and delay further progress. This outcome benefits no one, not the service industry, not the automakers, and not consumers.

In conclusion, automakers fully support the NASTF process and will continue to work cooperatively with the service industry on any issues. We welcome the support and participation of all stakeholders to improve and expand this voluntary process to make it more effective. Bringing everyone's efforts to bear can only improve our ability to provide the information, training, and tools needed by the service industry.

Thank you.

[The prepared statement of John Cabaniss follows:]

PREPARED STATEMENT OF JOHN CABANISS, ASSOCIATION OF INTERNATIONAL  
AUTOMOBILE MANUFACTURERS

Thank you for the opportunity to testify before the Subcommittee regarding vehicle service technology issues. My name is John Cabaniss. I am the Director for Environment and Energy at the Association of International Automobile Manufacturers (AIAM),<sup>1</sup> on behalf of which I am testifying today. I have been in my current job with AIAM for ten years. Prior to that, I worked in the U.S. Environmental Protection Agency's (EPA) motor vehicle emissions program for fifteen years and in the State of Virginia's air pollution control program for about ten years. I grew up with an automotive trades background. Both my father and my grandfather were shop owners and technicians for many years.

For the past five years, I have had the privilege of serving as the chairman of the National Automotive Service Task Force (NASTF), a voluntary, cooperative activity involving the automotive service industry, the equipment and tool industry, and automakers.<sup>2</sup>

<sup>1</sup>The Association of International Automobile Manufacturers (AIAM) is a trade association representing 14 international motor vehicle manufacturers, which account for 40 percent of all passenger cars and 20 percent of all light trucks sold annually in the United States. AIAM members have invested over \$27 billion in U.S.-based production facilities, have a combined domestic production capacity of 2.8 million vehicles, directly employ 93,000 Americans, and generate an additional 500,000 U.S. jobs in dealerships and supplier industries nationwide. AIAM members include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, Mitsubishi, Nissan, Peugeot, Renault, Subaru, Suzuki and Toyota. AIAM also represents original equipment suppliers and other automotive-related trade associations. For more information, visit our website at [www.aiam.org](http://www.aiam.org).

<sup>2</sup>NASTF itself takes no positions on issues.

The focus of today's hearing is on the discussions between the proponents of H.R. 2048, represented by the Coalition for Automotive Repair Equality (CARE) and the Automotive Aftermarket Industry Association (AAIA), and the opponents of the legislation, represented by AIAM, the Alliance of Automobile Manufacturers (Alliance), the Automotive Service Association (ASA), and the National Automobile Dealers Association (NADA). These discussions were held at the request of Chairman Barton and Senator Lindsey Graham during August and September of this year, were facilitated by the Council of Better Business Bureaus (CBBB), and observed by representatives of the Federal Trade Commission. The goal was to reach a non-legislative agreement over the "right to repair" issue.

Personally I participated only in the initial meeting of the facilitation group, but I worked closely with our facilitation team throughout the process. I have been involved in vehicle service issues in one way or another for over 40 years. I have been involved specifically in the "right to repair" issue even before legislation was introduced in Congress five years ago. I have testified several times before Congressional committees in opposition to the "right to repair" legislation with my most recent testimony being on June 28, 2005 before the House Subcommittee on Workforce, Empowerment, and Government Programs. That testimony is attached to this statement for the record of this hearing.

It was very clear throughout the CBBB facilitation process that the two sides were in agreement on most issues and lacked agreement on very few.

- All parties are pro consumer choice.
- All parties support aftermarket service providers.
- All parties support independent information providers.
- All parties support independent training providers.
- All parties support equipment and tool providers.
- All parties agree independent shops need open and timely access to the same information, tools, and training that are available to dealers.
- All parties agree the current voluntary, cooperative NASTF process is working effectively.

The only significant area of disagreement is that we believe the current cooperative NASTF process is working and government intervention is unneeded and counter-productive, while proponents support legislation and a regulatory program.

Automakers already make all vehicle service and training information available to independent technicians via the Internet at the same time it is available to dealers. Why do we do this? Because very simply no automaker wants to develop a reputation for producing vehicles that are difficult to repair or which can only be serviced at specific, sometimes inconvenient, locations. With all due respect, we believe that proponents of this bill fail to appreciate this basic, built-in market incentive for the dissemination of service and repair information.

As I mentioned, we support a cooperative approach that allows ALL interested stakeholders to be involved in the process of developing workable solutions to managing and accessing large volumes of information and addressing new issues that, given the pace of technological change, are certain to emerge. It may be tempting to think that there are only two principal groups concerned about these issues—automakers on the one hand and those represented by CARE on the other. In fact, there is a much larger number of stakeholders currently involved in the NASTF process, including tool companies, independent information providers, training providers, technicians, shop owners, dealers, locksmiths, and others. A viable NASTF program—which all parties agreed in the context of the CBBB talks should be the centerpiece of a voluntary solution—must be open to all stakeholders and incorporate decision-making procedures that are open and transparent.

This is the case today. For example, automakers are already working with the Equipment & Tool Institute (ETI), the trade organization representing tool companies, through the NASTF Equipment and Tool Committee to facilitate the transfer of information they use to design and manufacture generic tools for the aftermarket. In addition, automakers offer for sale to independent shops all factory tools available to dealers. Automakers are already working with independent training providers through the NASTF Training Committee to address any training issues. Other work in progress includes developing a methodology for dealing with security related information through the NASTF Vehicle Security Committee and addressing some issues related to collision repair information through the NASTF Service Information Committee. If any gaps are identified in any of these areas, automakers work within the NASTF process to address them.

The formalization of NASTF as an organization with full-time staff has been under serious consideration since the April 2005 NASTF general meeting. While NASTF has been very successful in its first five years operating as a group of volunteers sharing a common mission, its activities have grown to the point where some

full-time staff support is needed. A proposal for a three-year transition period to establish a permanent organization with a full-time staff and budget was submitted by ETI in mid August. A special NASTF meeting of a wide range of stakeholders was convened on October 19, 2005, to discuss the ETI proposal. It was agreed that a follow-up meeting would be scheduled to sort out details. On November 2, 2005, the semi-annual NASTF general meeting was held with over 150 participants in attendance. The ETI proposal was discussed and a general floor vote of support was called with no dissenting votes. We are currently working with interested stakeholders to schedule the follow-up meeting in mid December.

For the record, automakers oppose H.R. 2048 because we believe such legislation is unnecessary and counter-productive.<sup>3</sup> The types of problems identified by proponents of H.R. 2048, such as, the cost of accessing automakers' websites, format differences in automakers' websites, occasional content errors in information, and lack of enforcement are not issues which will be effectively addressed in regulations by FTC or any other agency. Given that the current automaker websites and cost structure are based on EPA's emissions regulations and approved by EPA, there is no reason to believe that the FTC would conclude that any significant changes are needed. Occasional content errors need to be and will be addressed through a process of continuous improvement, with or without regulation. And federal regulatory and enforcement processes are laden with procedural steps, which do not lend themselves to addressing problems quickly. As noted by the FTC in a recent letter to Representative John Dingell, self-regulatory programs are often the best way to address matters in an expeditious manner. This is especially true in such a dynamic area as information technology. The only thing that further federal regulation under H.R. 2048 would clearly do is slow down the process and delay further progress while the parties educate the FTC on the issues and debate the merits of regulatory approaches. This outcome benefits no one—not the service industry, not the automakers, not consumers.

In conclusion, automakers are completely committed to the National Automotive Service Task Force and to continuing to work cooperatively with the service industry on service technology issues. We welcome the support and participation of all parties in the service industry to improve and expand this voluntary process to make it even more effective. Bringing everyone's efforts and resources to bear on producing results, not rhetoric, can only improve our ability to provide the information, training, and tools needed by the service industry.

Thank you for the opportunity to address the Subcommittee on this important issue.

Mr. STEARNS. Thank you, Mr. Cabaniss.  
Mr. Lowe?

#### STATEMENT OF AARON M. LOWE

Mr. LOWE. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify in support of the Motor Vehicle Owners' Right to Repair Act.

My name is Aaron Lowe and I am Vice President of Government Affairs for the Automotive Aftermarket Industry Association. AAIA is a national trade association with 8,243 member companies and affiliates representing more than 54,000 vehicle repair shops and parts stores.

Right to repair legislation introduced this year by Representative Barton has been revised in two very important areas. One the revised legislation clarifies that the aftermarket only needs access to the same information that is available to the new car dealer. No more and no less. The new provision ensures that right to repair legislation is consistent with the trade secret protections provided in the Clean Air Act and which were crafted by this committee back in 1990 and there has—I point out very little if no problems in implementation by EPA. So we do not see the proprietary issue

<sup>3</sup>More information on the automakers' position on H.R. 2048 is available at [www.carfixinfo.org](http://www.carfixinfo.org).

as the major problem or stumbling block to this legislation, especially the new version.

Second, the bill has been clarified such that it would not create a new system for service information availability. We do not believe in new infrastructure for non-emissions related information or tools within the best interest of either the car companies or the aftermarket. There already is a system in place to make information and tools available that was due both to the EPA and California regulations. Under these rules, it would simply extend those requirements to non-emissions related information and provide enforcement authority to the Federal Trade Commission.

In fact, the bill is now consistent with the promises that the car companies have made back in 2002 with one very important difference. The legislation would be enforceable. The difference is critical. Dealership profits are no longer driven by new car sales alone but also parts and service revenue. Absent legislation or enforceable agreement AAIA is concerned that car companies will set their promises aside in their drive to maximize profits in their parts and service operations.

Notwithstanding the above, AAIA and the collation partners recognize that regulatory intrusion in the market is not always the best answer and therefore we agreed to meet with the car companies last July to determine if the non-regulatory solution could be developed. There were many positive sides of the merge from these meetings including the willingness by the car companies to discuss a system whereby their commitments could be enforced and thereby ensuring that they will make information, tools, and tool capabilities available to us long after the legislative battle has faded from memory.

Further, car companies appear willing to discuss enhancements that would ensure NASTF would be tasked quickly and effectively resolving service information and tool disputes. However, for the third party agreement enhanced NASTF to work, we believe that there needs to be a fair and balanced management of the organization and each manufacturer must be willing to enter into a clear and comprehensive agreement as to what information and tools are going to be made available. Unfortunately while the broad outlines of an agreement appeared within reach, critical issues remain unresolved. When emphasized that while the governance issue was the last issue that we dealt with, it was not by itself the whole reason that the negotiations ended.

A key reason of concern to our industry was the need for a commitment by the manufacturers to make both the tools and the tool capabilities available to our industry. Advances in technology demand that independent service center entities have access to the same diagnostic and repair capabilities that are available to the dealerships. The car companies would not commit to ensuring that the tools they sell our industry would have the same capabilities as those provided to the dealer franchises.

Similarly, we want the car companies to make service information or tool information available to our tool company suppliers to include the same repair and diagnostic capabilities that are available to the dealer tools. It was agreed to in the discussion that this was a very complex issue and that parties were not at the table. There-



fore, we were willing to leave the details of exactly what would be required to be made available, how it would be made available, and how it would be enforced to future negotiations. However, we felt that it was critical that the car companies agreed to fully release tool information and that a timeframe be developed for the details to be worked out. The car companies did not agree to those terms. In fact, the car companies could not commit to any enforcement mechanisms providing tool information or making it available at a reasonable cost.

Further, one of the most difficult and frustrating problems is the immobilizer issue. While some car companies are making this information available, the negotiators for the car companies could not agree to make this information available in this agreement because some manufacturers refuse to do so.

Another issue that caused considerable concern were that car companies could not agree on the scope of service information that was going to be required to be provided. Much information regarding repairs was made available to the dealers required hotlines. While we did not request access to the hotlines themselves, it is important that critical service information is developed to fix cars that is provided to all dealers through these hotlines is readily available to technicians as well.

Finally, the car companies were unwilling to establish a governance of the new organization as part of the agreement. We simply felt we do not want to put our industry in a handicap position regarding the quick and effective organization of NASTF and could derail the agreement before the first problem was ever solved.

The halt of the negotiation was a tough decision and one we did not take lightly. It is important to remember that the deadline was extended several times and there were—however following tough weeks of negotiations, we were convinced or became convinced that right to repair legislation was still necessary to ensure the independent aftermarket can obtain the same information and tools that are available to the new car dealers.

In conclusion, we can only speculate as to the competitive position that our industry would be in had this committee not had the foresight to take action and ensure competition with the inclusion of service information availability provisions in the Clean Air Act. The small businesses that comprise the independent aftermarket now ask the committee to take one additional step to ensure competition for all the vehicle service with the passage of this legislation.

Thank you for the opportunity to testify.

[The prepared statement of Aaron M. Lowe follows:]

PREPARED STATEMENT OF AARON M. LOWE, VICE PRESIDENT, GOVERNMENT AFFAIRS,  
AUTOMOTIVE AFTERMARKET INDUSTRY ASSOCIATION

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify in support of the Motor Vehicle Owners Right to Repair Act of 2005 (HR 2048). My name is Aaron Lowe and I am vice president of government affairs for the Automotive Aftermarket Industry Association. AAIA is a national trade association with 8,243 member companies and affiliates representing more than 54,000 vehicle repair shops and parts stores.

In the late nineties, the House Energy and Commerce Committee approved amendments to Clean Air Act legislation that would require car companies to share all emissions related service information and tools with the aftermarket that they

provide their franchised dealerships. The amendment became necessary due to provisions in the Act that would require 1994 and later vehicles be equipped with emission control computers that monitored and controlled nearly every emissions related function. This Committee was concerned that unless steps were taken to ensure competition, car companies would make access to these OBD systems proprietary, thus increasing the cost to car owners of maintaining their emissions systems. Similar service information availability rules were enacted in the State of California in 2000.

Since passage of the Clean Air Act in 1990, these computers have expanded beyond emissions to now control virtually every vehicle system on a vehicle including brakes, air bags, suspension and entertainment. Therefore, while the Clean Air Act service information rules have helped ensure that our industry can obtain tools and information for emissions related systems, there is no such requirement for non-emissions related systems. It is for this reason that the Motor Vehicle Owners Right to Repair Act was first introduced in 2001—to ensure that the actions undertaken to preserve competition for car owners on emissions related repairs, also carry forward for non-emissions related systems.

Right to Repair legislation introduced this year by Rep. Joe Barton has been revised in two very important areas. One, the legislation clarifies that the aftermarket only needs access to the same information that is available to the new car dealers, no more and no less. During hearings held last year by this Subcommittee, car companies charged that the aftermarket parts companies were after their blue prints in order to make the job of designing and producing replacement parts less costly. This is not and never was the case with this bill. Aftermarket parts manufacturers will continue their long standing tradition of building components that are, as good, or better than the car company parts that they replace. However in order to further allay manufacturer fears, the bill now further specifies that car companies only need to ensure access to the same tools and information available to the new car dealer, making the Right to Repair legislation consistent with the Clean Air Act requirements regarding proprietary information.

Second, the bill is not intended to create a new system for service information availability. We do not believe that a new infrastructure for non-emissions related information or tools is in the best interest of either the car companies or the aftermarket. There already is a system in place to make information and tools available to our industry due to both EPA and California regulations for service information availability. Under these rules, each car company is required to maintain a web site that contains all of their emissions related service information. The bill would simply extend these requirements to non-emissions related information and provide enforcement authority to the Federal Trade Commission (FTC) should a manufacturer not comply with the bill's requirements.

In fact, the bill now is consistent with a letter that the car companies and the Automotive Service Association sent to the Senate Commerce Committee in 2002. In that letter, the manufacturers promised to make emissions and non-emissions related information available to our industry. The one difference between the letter and the legislation is that the promises made by the manufacturers would now be enforceable. This difference is critical due to the fact that the aftermarket and car company service and parts networks are locked in a major competitive battle for the dollar of the car owner.

Dealership profits are no longer driven by new car sales alone, but also parts and service revenue. According to the National Automobile Dealers Association (NADA), even though dealership parts and service department sales comprise just 11.8 percent of typical dealer's total sales, it contributes 48 percent of the total operating profit. New car sales make up 60 percent of total sales, but only contribute 35 percent of total profit. Absent legislation or an enforceable agreement, AAIA is concerned that car companies will set their promises aside in their drive to maximize profits from their parts and service operations.

While our industry does not have a problem competing on a level playing field for service and repair work, the use of electronics and computers on late models by the car companies threatens to shift the playing field and reduce competition in the aftermarket. Small service facilities and their customers will suffer as a direct result.

Notwithstanding the above, AAIA and its coalition partners recognize that regulatory intrusion in the market is not always the best answer and therefore we agreed to meet with the car companies last July to determine if a non-regulatory solution could be developed. These negotiations were facilitated by the Better Business Bureau and monitored by the Federal Trade Commission.

Unfortunately, while there was significant progress and much positive discussions during the two month long negotiations, these sessions ended without an agreement

that would satisfy both the car companies and the independent aftermarket. Among the positive signs that emerged from these meetings was the willingness of the car companies to discuss a system whereby their commitment could be enforced and thereby better ensuring that they will continue to make information, tools and tool capabilities available to us long after this legislative battle has faded from memory.

Further, over the past year, the aftermarket has expressed strong concerns that the National Automotive Service Task Force (NASTF), which was established by the car companies to address service information issues, was an ineffective organization in resolving information and tool issues. Our main concern was that absent an enforcement element, whether government or third party, the organization could not effectively address a car company's reluctance to provide service information or tools. Further, the absence of any structure or staff for the organization meant that it could not quickly and effectively resolve issues raised by independent shops as evidenced by the extensive time currently necessary for NASTF to resolve complaints. These problems led most technicians to forgo the NASTF process and to take matters into their own hands, using back door methods to obtain the tools and information they need to serve their customers. During the negotiations, the car companies appeared willing to discuss the establishment of an effective organization which, combined with third party enforcement, could help quickly resolve information issues for independents.

However for the third party agreement and the enhanced NASTF to work, AAIA believes that there must be a fair and balanced management of the organization and each manufacturer must be willing to enter into a clear and comprehensive agreement as to what information and tools they are going to make available to independents. Only under these circumstances would we be able to develop a service information and tool availability system that would work in practice and obtain the needed credibility with the industry to ensure it would be used. Unfortunately, while the broad outlines of an agreement appeared within reach, critical governance issues and an unwillingness by the manufacturers to commit to full availability of service information, tools and tool information led to the break down of the negotiations.

A key issue of concern to our industry was the need for a commitment by the manufacturers to make both their tools and the tool capabilities available to the aftermarket. Advances in technology demand that independent service entities have access to the same diagnostic and repair capabilities that are available to the new car dealerships. The car companies would not commit to ensuring that those tools possessed the same capabilities as those provided to the dealer franchises. As the Subcommittee heard at its hearing on this subject last year, in many cases, the tools purchased by independents from the car company have missing capabilities that often prevent a technician from completing a repair.

Similarly, we wanted car companies to make available information needed by tool companies to include the same diagnostic and repair capabilities that are available on dealer tools. During negotiation on this area, we made it clear that we were not going to hold the car companies responsible for whether or how the tool companies used the capabilities in this instance, but that they would need to commit to making tool information available under reasonable licensing and security conditions. It was agreed during the discussion that this was a very complicated issue and that the parties representing the tool industry were not at the table. Therefore we were willing to leave the details of exactly what would be required to be made available, how it would be made available, and how it would be enforced to future negotiations. However, we felt that it was critical that, at minimum, the car companies agreed to fully release tool information and that a time frame be developed for the details to be worked out. The car companies could not agree to those terms. In fact the car companies could not agree to any enforcement mechanism for providing the tool information or making it available at a reasonable cost.

In addition, the companies would only commit to providing scan tool information and tire pressure monitoring. This reluctance to move beyond scan tools could be critical since diagnostic and repair capabilities may in the future be provided through avenues beyond the current scan tools and therefore we did not want to limit the future viability of this agreement by only focusing on current technology.

Further, one of the most critical problems facing independents on a day-to-day basis is attempting to repair vehicles equipped with immobilizer systems. These systems help reduce theft by preventing a car from being started unless a chip on the key makes a handshake with a chip in the vehicle engine systems. While some car companies are making this information available, the negotiators for the car companies could not agree to make mobilizer information available because some manufacturers are refusing to make it available to independents. It is imperative that this problem be solved or a system designed to lock out thieves will lock out repair shops

as well. Due to the fact that many manufactures have successfully been able to provide access for independents without jeopardizing vehicle security and the fact that all of the car companies make this capability available to their dealer, AAIA can only conclude that, given a commitment from the car companies, that they could develop a secure system whereby an independent can reinitialize a theft system without being forced to tow the vehicle to a dealership.

Another issue that caused considerable concerns was that the car companies could not agree on the scope of the service information that would be required to be provided under the agreement. The manufacturers were only willing to make manuals and technical service bulletins available to our industry. In fact, much information regarding repairs is made available through their private dealer hotlines. While we are not demanding access to the actual hotlines, it is important that critical service information that is developed to fix cars, and which is provided to all dealers through their hotlines, needs to be readily available to independent technicians as well.

Finally, the car companies were unwilling to establish the governance of the new organization as part of the agreement. The aftermarket had put forward a proposal that would provide for the equal representation on the original board for the new NASTF with four members being appointed by the car companies and four by the aftermarket. Since the governance of this organization was crucial to whether it succeeded in ensuring that information and tools are made available, we felt it was critical for the viability of both the organization and the agreement, that the governance issue be settled in advance. The car companies wanted to have this issue resolved later after the agreement was signed. We simply felt this would put our industry in a handicapped position regarding the quick and effective organization of NASTF and could derail the agreement before the first problem was solved.

The halt of the negotiation was a tough decision and one we did not take lightly. It is important to remember that the deadline for a settlement was extended three times because we felt that it was important that we do everything possible to reach an agreement. However, following weeks of tough negotiations, we are convinced that Right to Repair legislation is necessary to ensure that the independent aftermarket can obtain access to the same information and tools that are available to the new car dealers.

In conclusion, you likely will hear from the manufacturers today that they are fully committed to making service information available to our industry and that, in fact, it is in their best interest to do so in order to promote customer satisfaction. While we agree with that statement, it is important to remember that in Canada, which has a very similar aftermarket to the U.S., independent service facilities are denied access to many of the same service information web sites that are available to U.S. technicians. Further, when our sister organization in Canada attempted to organize a voluntary system north of the border, that request was denied by the associations representing the Canadian auto manufacturers. Of course, at this point there are no service information laws or legislation in Canada, a fact that the aftermarket is attempting to rectify.

We can only speculate as the competitive position that our industry would be in had this Committee not had the foresight to take action to ensure competition with the inclusion of service information availability provisions in the Clean Air Act. The small businesses that comprise the independent aftermarket now ask the committee to take one additional step to ensure competition for all vehicle service with the passage of the Motor Vehicle Owners Right to Repair Act.

Thank you for the opportunity to testify on this important issue. I am available to answer any questions from the Subcommittee regarding the legislation or the negotiations.

Mr. STEARNS. Thank you.

Mr. BRAZIEL?

#### **STATEMENT OF ROBERT BRAZIEL**

Mr. BRAZIEL. Mr. Chairman, members of the subcommittee on behalf of the National Automobile Dealers Association, I appreciate the opportunity today to discuss the state of the automotive maintenance and repair industry. My name is Robert Braziel and I serve as Chief Legislative Counsel, a post I have held for the past 6 years.

The National Automobile Dealers Association is the national trade association that represents 20,000 franchise dealerships with over 1,000,000 employees, about half of whom work in dealership service and parts departments. In 2004, franchise automobile dealers provided 369,125 service stalls, employed 279,150 technicians, and carried a parts inventory valued at \$5.6 billion. Franchise dealerships located throughout the country and in all your congressional districts have many of the best trained and best equipped automotive technicians maintaining, servicing, and repairing today's sophisticated and complex motor vehicles.

Diagnosing and fixing today's automobiles requires that shops invest significantly in information, equipment, and training. Dealerships make such investments because vehicle manufacturers and the motoring public demand nothing less. In fact, successful repair facilities in today's world must make continuing investments in tools, training, and information to adequately serve their customers.

In addition to performing warranty and other repairs on their franchise vehicles, franchise dealerships are increasingly engaged in the service of used vehicles for which they do not hold a franchise. In that situation, an automobile dealer stands in the same place as an aftermarket service provider. Needing to make choices about the kinds and type of maintenance and repair services they want to pursue based on the financial investment that may be required.

There have been a number of members who have raised issues of equivalency of outcome but essentially what we are talking about is equivalency of access. To get to equivalency of outcome, you have to make the investments in today's world.

Of the nearly \$500,000 million non-warranty service events annually, the aftermarket not the franchise dealer performs roughly 75 percent of the service. The aftermarket has the ability to maintain that high level because it has access to all the following, manufacturer specific service information provided through third party information providers like Mitchells, Alldata, and Identifix; manufacturer specific websites containing service information; manufacturer specific training materials, manufacturer specific diagnostic tools covering both emission and non-emissions functions; diagnostic tools developed from tool information provided to toolmakers by vehicle manufacturers. One point should be made that the franchise dealer does not obtain that tool information. He uses the diagnostic tool purchase from the manufacturer.

Motor vehicle manufacturers have an economic interest in providing this level of access. They want their vehicles repaired correctly by well equipped and trained service technicians.

The National Automotive Service Task Force was initiated in 2000 to facilitate the flow of automotive service information, training information, tools, and tool information to market participants. Stakeholders in NASTF have developed it into an effective information clearinghouse that also provides for an inquiry system in cases where a gap and information is suspected. As the number of parties have mentioned, there were 48 inquiries out of 500 million service events.

Despite the facts about access and operations of NASTF, large parts distributors under the coalition for automotive repair equality

along with the Automotive Aftermarket Industry Association are seeking the Federal Government to take over the automotive repair industry on the premise that information is not available or being withheld. Frankly, it remains difficult for independent service providers to comprehend how a Federal Government entity without any experience in automotive repair issues would do a better job than the private sector addressing these issues.

During August and September of this year, the Better Business Bureau convened the facilitation. The facilitation was hamstrung from the beginning by CARE's refusal to even discuss the nature and scope of the issue we reportedly were trying to solve. Nevertheless, we did reach agreement on critical areas. The October 3 letter also noted several issues that were not resolved. While NADA actively sought resolution of those issues, CARE's demand for a controlling stake in NASTF's board prevented any agreement from taking place. No one interested party, particularly parts distributors should have a controlling interest in NASTF. Any board of NASTF should be balanced with all stakeholders including vehicle manufacturers, service providers, information providers, tool-makers, and training providers. Notably a CARE controlled NASTF would not have only diminished the interests of many important stakeholders but could have raised antitrust concerns.

Given the impasse at the negotiation level, I would like to speak just a moment to the legislation. And again the proponents of the legislation have said that they are only seeking the information and diagnostic tools that the dealer, franchise dealer has. The manufacturers have made that commitment since 2002 to provide both the diagnostic tool and that service information. I believe a careful reading of the legislation will indicate that the reach goes beyond those two items.

The National Automobile Dealers Association and its members continue to believe that the current voluntary and cooperative private sector effort remains vastly preferable for the individual service technician. Federal regulation as a number of members have noted is rarely superior to a private sector system that stakeholders agree works.

In closing, I would like to emphasize one final point. This entire issue suffers from the fundamental misperception that automobile manufacturers unduly favor their franchise dealerships. That is simply untrue. If it were true, manufacturers would not have set up openly available websites for emissions and non-emissions information. If it were true, manufacturers would not be making available to everyone the same training materials franchise dealerships must obtain. If it were true, manufacturers would not be making available to everyone the same manufacturers specific diagnostic tools they require their dealerships to purchase. If it were true, manufacturers would not be providing non-emissions tool information to third party toolmakers at no charge. If it were true, the aftermarket providers would not perform 75 percent of non-warranty repairs.

On behalf of NADA, I appreciate the opportunity to testify and look forward to your questions.

[The prepared statement of Robert Brazier follows:]

PREPARED STATEMENT OF ROBERT BRAZIEL, NATIONAL AUTOMOBILE DEALERS  
ASSOCIATION

INTRODUCTION

On behalf of the National Automobile Dealers Association, I appreciate the opportunity to discuss the state of the automotive maintenance and repair industry. My name is Robert Braziel, and I serve as the Chief Legislative Counsel, a post I have held for the past six years.

FRANCHISED DEALERS AND AFTERMARKET SERVICE PROVIDERS

The National Automobile Dealers Association (NADA) is the national trade association that represents 20,000 franchised dealerships with over one million employees, about half of whom work in dealership service and parts departments. In 2004, franchised automobile dealers provided 369,125 service stalls, employed 279,150 technicians, and carried a parts inventory valued at \$5.6 billion. Franchised dealerships located throughout the country and in all your congressional districts have many of the best-trained and best-equipped automotive technicians maintaining, servicing and repairing today's sophisticated and complex motor vehicles.

Diagnosing and fixing today's automobiles requires that shops invest significantly in information, equipment, and training. Dealerships make such investments because vehicle manufacturers and the motoring public demand nothing less. Automobiles will become even more complex in the future, requiring even more sophisticated, highly trained technicians. While diagnostic tools are necessary for repair work, they alone are not sufficient. Trained technicians must still analyze the information tools provide and, often through the process of elimination, pinpoint the exact problem. Tools often help find problems generally, but technicians solve them. For all these reasons, successful repair facilities in today's world must make continuing investments in tools, training and information to adequately serve their customers.

In addition to performing warranty and other repairs on their franchised vehicles, franchised dealerships are increasingly engaged in the service of used vehicles for which they do not hold a franchise. In that situation, an automobile dealer stands in the same place as an aftermarket service provider, needing to make choices about the kind and types of maintenance and repair services they want to pursue based on the financial investment that may be required. Accordingly, franchised automobile dealers have a unique perspective to view the automotive repair industry, both as a franchised dealer and an aftermarket service provider. Viewed from both perspectives, there is no question access to the information and tools necessary to service and repair motor vehicles has never been better if a service provider is willing to make the requisite investments.

ACCESS IN THE AUTOMOTIVE REPAIR INDUSTRY

Of the nearly 500 million non-warranty service events annually, the aftermarket performs roughly 75 percent of the service, while franchised dealers handle the other 25 percent. The aftermarket has the ability to maintain that high level because it has access to all of the following:

- Manufacturer specific service information provided through third-party information providers like Mitchells, Alldata, and Identifix;
- Manufacturer specific websites containing service information;
- Manufacturer specific training materials;
- Manufacturer specific diagnostic tools covering both emissions and non-emissions functions;
- Diagnostic tools developed from tool information provided to toolmakers by vehicle manufacturers;

Motor vehicle manufacturers have an economic interest in providing this level of access. Motor vehicle manufacturers want their vehicles repaired correctly by well-equipped and trained service technicians. The simple fact is that a frustrated or dissatisfied customer is not likely to be a repeat buyer.

NASTF

The National Automotive Service Task Force (NASTF) was initiated in 2000 to facilitate the flow of automotive service information, training information, tools, and tool information to market participants. Stakeholders in NASTF have developed it into an effective information clearinghouse that also provides for an inquiry system in cases where a gap in information is suspected. Of the roughly 500 million non-

warranty service events performed in 2004, NASTF was called upon to resolve only 48 inquiries. For those doing math, 48 out of 500 million is .000000096.

Despite the facts about access and the operations of NASTF, large parts distributors, under the Coalition for Automotive Repair Equality (CARE) along with the Automotive Aftermarket Industry Association (AAIA), are seeking a Federal government takeover of the automotive repair industry on the premise that information is not available or being withheld. Under the legislation supported by these parts distributors, but opposed by independent garages of the Automotive Services Association (ASA), the Federal Trade Commission would engage in rulemaking to develop a government controlled regime to oversee the flow of vehicle service, training and tool information. Frankly, it remains difficult for independent service providers to comprehend how a Federal government entity without any experience in automotive repair issues would do a better job than the private sector addressing these issues. Rather than working to enhance NASTF for the betterment of all service providers, CARE and AAIA choose instead to pour resources into legislation that seeks Federal regulation and enforcement.

#### BETTER BUSINESS BUREAU (BBB) FACILITATION

During August and September of this year, the Better Business Bureau convened a facilitation with representatives of NADA, ASA, CARE, AAIA, the Alliance of Automobile Manufacturers (AAM), and the Association of International Automobile Manufacturers (AIAM). That facilitation was hamstrung from the beginning by CARE's refusal to even discuss the nature and scope of the issue we reportedly were trying to solve. Nevertheless, the BBB's letter of October 3 noted agreement of the parties on many core issues "including strengthening and funding of the NASTF process, rigorous time frames that would need to be observed, dispute resolution procedures, and many remedies for a third party dispute resolution framework."

The October 3 letter also noted several issues that were not resolved. While NADA actively sought resolution of those issues, CARE's demand for a controlling stake in NASTF's board prevented any agreement from taking place. No one interested party, particularly parts distributors, should have a controlling interest in NASTF. Any board of NASTF should be balanced with all stakeholders, including vehicle manufacturers, service providers, information providers, toolmakers, and training providers. Notably, a CARE controlled NASTF would have not only diminished the interests of many important stakeholders, it also could have raised serious antitrust concerns.

#### LEGISLATION AND REGULATION

Given the current impasse predicated on CARE's demand for control of NASTF, let me now turn to the legislation before us. I would like to briefly highlight three important issues for committee members to consider. The first is that you will be displacing a working private sector entity made up of market participants and putting the Federal Trade Commission, which has no automotive repair knowledge or background, in control of the flow of information through a new regulatory regime. Second, while recent revisions to the bill struck previous language explicitly providing for private rights of action for car owners, NADA continues to be concerned that private rights of action against automobile manufacturers under state laws will be encouraged by a number of findings in the bill. Third, we still view the legislation as requiring disclosure of information beyond that possessed by a franchised dealer and thus potentially compromising intellectual property rights. Our view on that issue is reinforced by the fact that it is large parts distributors, not independent repair shops, who are the prime proponents of this legislation.

#### CONCLUSION

Like the independent repairers at the Automotive Services Association, the National Automobile Dealers Association and its members continue to believe that the current voluntary and cooperative private sector effort remains vastly preferable for the individual service technician than a government command and controlled process. Federal regulation is rarely superior to a private sector system that stakeholders agree works.

In closing, I want to emphasize one final point. This entire issue suffers from the fundamental misperception that automobile manufacturers unduly favor their franchised dealerships. That is simply untrue.

If it were true, manufacturers would not have set up openly available websites for emissions and non-emissions information. If it were true, manufacturers would not be making available to everyone the same training materials franchised dealerships must obtain. If it were true, manufacturers would not be making available to



everyone the same manufacturer specific diagnostic tools they require their dealerships to purchase.

If it were true, manufacturers would not be providing non-emissions tool information to third party toolmakers at no charge. If it were true, aftermarket providers would not perform 75% of non-warranty repairs.

On behalf of NADA, I appreciate the opportunity to testify and look forward to your questions.

Mr. STEARNS. Thank you.

I will start with my question first. And I think we have on the second panel two individuals who are actually operating in the field, Mr. Everett and Mr. Brotherton so these are not part of the Washington infrastructure. In fact, one of the individuals can actually vote for me so I have to be careful. But you both, the two of you are sitting beside to each other and you are both on the opposite side here so I am going to try to ask a question.

Now Mr. Everett, you are from Bayville Auto, Bayville, New Jersey, right?

Mr. EVERETT. Yes, sir.

Mr. STEARNS. Is that close to Atlantic City?

Mr. EVERETT. We are about 50 miles north of Atlantic City right on the coast near Tom's River.

Mr. STEARNS. Okay. Is business pretty good?

Mr. EVERETT. It is—my shop is doing okay.

Mr. STEARNS. Well let say compare it with 10 years ago. How was the business 10 years ago?

Mr. EVERETT. Well my shop for the last 10 years has grown steadily as it has expanded.

Mr. STEARNS. Okay.

Mr. EVERETT. Although there is definitely new challenges in our industry now.

Mr. STEARNS. So let us say 10 years ago you had 20 employees?

Mr. EVERETT. I would say 10 years ago it was easier to make money with the size of the operation at the time. Today it is much more difficult.

Mr. STEARNS. So the profit margin has gone down.

Mr. EVERETT. Yes.

Mr. STEARNS. But the business has gone up so you are doing—

Mr. EVERETT. Yes.

Mr. STEARNS. [continuing] a bigger volume with less percent profit?

Mr. EVERETT. Correct.

Mr. STEARNS. Mr. Brotherton, what about you? How long has your business been in place?

Mr. BROTHERTON. We have been in business 28 years and our business sort of stabilized at probably an amount of car repairs about 10 years ago.

Mr. STEARNS. So it is pretty much the same size it has been for the last 10 years?

Mr. BROTHERTON. Yes.

Mr. STEARNS. Okay. And Mr. Everett is probably in more of a burgeoning market than you are. I know Gainesville is a university town that the university is getting bigger but, you know, industry coming in there has not been very good.

Mr. BROTHERTON. We are an awful big shop.

Mr. STEARNS. Okay.

Mr. BROTHERTON. We have a 22 bay shop.

Mr. STEARNS. Okay, 22 bays. Now Mercedes is a pretty expensive car to repair, right?

Mr. BROTHERTON. Yes.

Mr. STEARNS. And you said BMW's and Mercedes generally.

Mr. BROTHERTON. Yes.

Mr. STEARNS. And Mr. Everett, what kind of cars do you deal with?

Mr. EVERETT. We service all makes and models.

Mr. STEARNS. So you will do a Ford, a Chrysler, imports, Mercedes, you will do them all?

Mr. EVERETT. Yes. We do not do as many of the high end cars as maybe in some other areas. They are just not in our market.

Mr. STEARNS. If you can tell me, this year, how many customers do you have to refer to the local dealer, the BMW, Mercedes, Chevrolet, Ford dealer because you could not get the necessary information from the manufacturer? Just approximately.

Mr. EVERETT. We are a pretty progressive shop.

Mr. STEARNS. Okay.

Mr. EVERETT. We have become very, very good at finding work around to find a way to take care of our customers as somebody had indicated before.

Mr. STEARNS. You will just do whatever it takes?

Mr. EVERETT. Yes, and some—well what I do know is that it costs our customers more time and more money than it should and it is becoming more and more difficult. I hear that not just in our own shop but I hear it from a lot of our members.

Mr. STEARNS. I know but you might tell me specifically, I mean here you are testifying on behalf of this kind of bill that Mr. Chairman Barton has. Can you specifically tell me where you have actually had to refer people to local dealers? Can you say I can remember on May 3 I had this Ford I could not get the part, this Chrysler. I mean, can you give me that kind of detail or not?

Mr. EVERETT. Well we have had to on numerous occasions call outside vendors that specialize in certain areas that have special connects through backdoors and cars that we should not have been able to repair, we have been able to because of our leadership position in our market we have been able to take advantage of, you know, special arrangements. We should not have to do that and those arrangements are quickly getting cutoff so. I certainly know several other shops that just give up and send it back to the dealer. They are not as diligent as—

Mr. STEARNS. But not your shop?

Mr. EVERETT. In my shop?

Mr. STEARNS. Other dealers you say give up but your shop does not. You seem like you have been able to overcome this problem.

Mr. EVERETT. In my shop, I can think of one Mercedes that we had to send back to the dealer.

Mr. STEARNS. One Mercedes, okay. Mr. Brotherton, yes?

Mr. BROTHERTON. I know exactly how many I have sent, two.

Mr. STEARNS. In this year?

Mr. BROTHERTON. Yes, one Honda.

Mr. STEARNS. Yes.

Mr. BROTHERTON. And one Audi. The Audi I could have got the equipment but I have not presented—I have not done that yet because it is a low volume part of my business. The Honda had a key issue and——

Mr. STEARNS. Can you specify the equipment we are talking about for the record.

Mr. BROTHERTON. The Honda, their factory tool does not—they have removed the immobilizer function, the programming of keys.

Mr. STEARNS. Okay.

Mr. BROTHERTON. So we had to send a Honda. But I can do that for Mercedes, I can do that for BMW, I can do every system on the car for all those instances and I can do it because I bought the tools because I invested in it, I capitalized my shop, we have the training——

Mr. STEARNS. It occurs to me when you buy these tools, do you have to buy the tools that Mercedes tells you to buy or can you buy generic tools?

Mr. BROTHERTON. I can buy what I want but if I want to do the job completely then——

Mr. STEARNS. You have to buy Mercedes tools.

Mr. BROTHERTON. [continuing] I have to buy the Mercedes tools.

Mr. STEARNS. Okay. So you have got—your people are all trained and they use Mercedes tools and you have had no problem with co-operation from Mercedes in all that?

Mr. BROTHERTON. We use—regularly I am on line right now because I was a member of the OEM audit, preliminary audit for the OEM websites and I am on—I have a half of year from Mercedes and I have been using it regularly but I was using it beforehand on a daily basis as necessary.

Mr. STEARNS. Okay.

Mr. BROTHERTON. I have bought over the years volumes of manuals to work on the cars that I work on. I work on 10 car lines and I work on two of them real well. I plan on working on them as well as a dealer does.

Mr. STEARNS. Mr. Everett, I think it is in your court here to make the case. I mean, Mr. Brotherton says there are only two this year. He has—how many bays did you say you had?

Mr. BROTHERTON. Twenty-two bays, we have done 10,000 invoices, probably two to three repairs per invoice.

Mr. STEARNS. So Mr. Everett now I need those kind of statistics from you, too if possible. Is that a fair question for you?

Mr. EVERETT. Yes, I think that is a fair question. I would purport that Mr. Brotherton's shop has a little different, little unique business plan compared to most independent repair shops.

Mr. STEARNS. It is very narrow in——

Mr. EVERETT. It is very narrow, it is very specialized. It is much more like a dealer.

Mr. STEARNS. Yes.

Mr. EVERETT. Much more like a dealer scenario so it is easier for him to spend that extra money or that extra investment to develop those relationships.

Mr. STEARNS. But he is not a dealer. He is not a dealer. You do not sell new Mercedes or BMW's?

Mr. BROTHERTON. No.

Mr. STEARNS. Okay, go ahead.

Mr. EVERETT. No, but the model is very similar to a dealership where it is one or two car lines that he works on on a regular business.

Mr. STEARNS. Okay.

Mr. EVERETT. On a regular application. In a repair shop like mine which I feel better, is a better example of most repair shops in this country, I could not survive on just one make or model. There is not enough of one particular make or model in my area.

Mr. STEARNS. Yes.

Mr. EVERETT. The cars that he is working on are higher line cars so you get more money to repair those in a general aspect. So the challenges that he faces in his specialized repair shop are much different than the great majority of repair shops out there. Those challenges are easier to focus on and maintain because you are seeing the same cars all the time.

Mr. STEARNS. I suspect though you are coming to this hearing and you are advocating for this bill. You should have statistics with you specifically from your shop to convince us that this bill is needed I would say. I mean but I also have a feeling that you are a good businessman and that you have grown the shop and that you make the customer happy and you——

Mr. EVERETT. We fight to do that.

Mr. STEARNS. If necessary you will make the parts yourself. I mean, it looks like you are the type of guy that will do whatever it takes so——

Mr. EVERETT. Practically, yes.

Mr. STEARNS. [continuing] you might be the average person in Ocala, Florida or maybe Gainesville is not a——

Mr. EVERETT. Excuse me.

Mr. STEARNS. Go ahead.

Mr. EVERETT. That is correct. And I would hate to, you know, of course in any way mislead the subcommittee. We have been able to find work around. I know that we fight, we have to fight to do that. We have to fight harder all the time.

Mr. STEARNS. Yes.

Mr. EVERETT. And lots of scars from that. I also hear from other shops that maybe are not as progressive and they simply give up and send it back to the dealer.

Mr. STEARNS. Yes.

Mr. EVERETT. And that hurts their business, it hurts their community, hurts their families that work at those shops right on down the line. We are very——

Mr. STEARNS. Mr. Brotherton says that not only did he get the tools that Mercedes told him he has had his people trained. So often times they can, the dealer can give you the information but if you do not have the people that are trained, you do not have the tools, you cannot do the job. So it is, you know, we are talking about just—not just information but the dealer training and the giving of the tools.

Mr. EVERETT. That is an excellent point. And the aftermarket has developed very, very solid training programs. It is a condition of employment in my shop in writing that my employees must go to training every single month. We have become very good at if the

information is available, teaching our guys how to repair these cars. And that is one of the tricky arguments we have when we talk to our consumers that it is very easy for them to get the wrong impression that we are not capable of fixing the cars. That is not the case at all it is a question of when the information is not available that we cannot fix it. And that is one of the reasons why we fight so hard not to send that car back to the dealer. You lose confidence from your customers. They just think well Bob just cannot fix my car anymore. That is a very difficult thing.

Mr. STEARNS. My time has expired.

Do you have quick question or quick—

Mr. BROTHERTON. I would like to make a statement that although I work on a high line of cars. I also work on 10 car lines. I work on Volkswagens, I work on Hondas, I work on Jaguars, Volvos, and Saabs. I have a factory tool for all of those cars. And it was my business decision to buy those tools, to make information accessible for myself and it is accessible. It is only a matter of the commitment of the shop. It is strictly a matter of the commitment of the shop. It is accessible.

Mr. STEARNS. My time has expired.

Ms. Schakowsky?

Ms. SCHAKOWSKY. With all due respect to the other panelists, I want to focus on this as well because I think it kind of gets to the heart of the matter.

And so Mr. Brotherton, you represent the Automotive Service Association that you say is the largest of the auto repair shops. How did you come to the position that you are taking? Did you survey your members you represent in your view the majority of small and medium auto repair shops?

Mr. BROTHERTON. My position happens to be the same as the ASA position. I am not at the moment in any functional capacity of ASA. I have a personal experience with this issue because I was involved with—

Ms. SCHAKOWSKY. But let me just say, I am looking at the statement of Mr. Steve Brotherton, Automotive Service Association before the U.S. House Energy and Commerce Committee. Are you not speaking for them?

Mr. BROTHERTON. I am speaking representing their point of view.

Ms. SCHAKOWSKY. And that is why I am asking how is that point of view determined?

Mr. BROTHERTON. My point of view, I mean, the way it was determined for me was from—

Ms. SCHAKOWSKY. No, I am asking how the association—you are representing an official position of an association that I know Mr. Everett himself is a member of, right, so I am just wondering what the process was. I think we have to have confidence that when you speak for an association that there was a process to assess that you are accurately representing the interests of the associations.

Mr. BROTHERTON. Which point are you making? I—

Ms. SCHAKOWSKY. I want to know how, did you survey, were the members surveyed? I am looking around this room and I suspect that there are a number of people wearing yes on 2048 badges that are also members of ASA as is Mr. Everett. So I am just curious.

You told me for example, Mr. Everett that 79 percent of NFIB or 77 percent of NFIB numbers were surveyed and said that they supported this legislation.

Mr. EVERETT. That is correct.

Ms. SCHAKOWSKY. Was there a percent of ASA members that you know that support, that oppose this legislation?

Mr. EVERETT. And that was directed to me, ma'am?

Ms. SCHAKOWSKY. No, I am asking Mr. Brotherton.

Mr. BROTHERTON. I would imagine that there probably are. And the ASA, I presume is a representative association. They elect leaders and—

Ms. SCHAKOWSKY. Yes, I would like them to get from ASA that information.

Mr. BROTHERTON. I am not—

Ms. SCHAKOWSKY. I know. I just thought if I could ask you to—

Mr. BROTHERTON. I am a technical expert I know what the issues are that we are talking—

Ms. SCHAKOWSKY. Let me—okay, Mr. Everett you—

Mr. EVERETT. Yes, I would just like to add to that. Our coalition actually did a survey of ASA members and according to the survey we performed at that time, the majority of ASA members had stated that they had problems with information access in this particular area. Unfortunately I am not in agreement with the leadership of our association and the position they have taken. Although, of course, they questioned our survey there but we have actually even tried even—I certainly know ASA never asked me what my opinion was, although they know now.

Ms. SCHAKOWSKY. One of the ways that we are trying to get at to measure the extent of the problem is the number of times that a customer has to be turned away and sent back to the dealer. But what I am getting from you is that that is not the only way to judge whether or not we have a problem on our hands and I wondered if you could go into that a little bit more, what those problems are.

Mr. EVERETT. I would agree with you there that we—the better shops, the more aggressive shops, the more well equipped shops still are very good at using their relationships perhaps out the backdoor through the loop back at the dealer and getting some information that is more of a privilege that we normally would not be able to get. I can tell you that it is becoming very, very difficult for us to repair the car in a timely and cost effective manner. And I definitely have had many instances where they are holding a car over another day or two or three to get stuff taken care of for my customers. That has cost them time, it has cost them money. And in a lot of cases to keep my customer as a businessman, I will end up eating that extra inconvenience, even lend them a car if I have to. That I have had many instances over the year and the problem is getting worse I guess.

I first starting working on this instance, issue I guess back in 1998. I went to an ASA convention in Detroit, Michigan. I was invited to a special hearing with Charlie, the man who at the time was in charge of the information rule with the EPA and we had the mechanical ops committee from ASA there along with one of my colleagues that did a presentation about this problem that we

saw coming down the road. This was back in 1998. And at that point we asked ASA what their position was. They did not have one at that time. From that point in, they continued, they developed a position. For a long time they were on our side of the table. Unfortunately, they cut a deal and switched to the other side.

Ms. SCHAKOWSKY. Let Mr. Brotherton—

Mr. BROTHERTON. Just to give you an answer to your specific question. The ASA has a democratically elected board of directors who unanimously decided to support the automaker agreement. In a survey that they sent out to members, 99 percent of the respondents supported the agreement.

Ms. SCHAKOWSKY. And did the survey go out to all the members?

Mr. BROTHERTON. I would presume it was sent to all the members, that is what they told me, yes.

Ms. SCHAKOWSKY. Mr. Everett?

Mr. EVERETT. Ms. Schakowsky, I was handed the specifics from the survey that was done. The overwhelming level support is consistent along the lines of automotive service providers. Ninety-eight percent supported H.R. 48, Automotive Service Association members 93 percent, and Automotive Aftermarket Industry Association members 94 percent, members of the State automotive retail trade groups 92 percent.

Ms. SCHAKOWSKY. This is what survey?

Mr. EVERETT. This is the survey that our group has done by the Terrance Group, Lakes, Nell, and Perry Associates, key findings of the survey of automotive aftermarket retailers.

Ms. SCHAKOWSKY. Okay.

Mr. EVERETT. So it is by in large from 90 percent of the shops and members of the aftermarket feel there is a problem with information access.

Ms. SCHAKOWSKY. Well we have got a serious discrepancy here obviously. So Mr. Brotherton are all these people who obviously tool time off from work and came here and—are they just inadequate in their—I mean, what—how do we end up with this—are you denying that these are problems or are you—

Mr. BROTHERTON. No, it is easy to see I would deny that. I mean, physically I have got the information to do what I need to do to fix cars. I have the tools.

Ms. SCHAKOWSKY. In a costly and timely way for people who may not have the kind of business that you have?

Mr. BROTHERTON. I send my—to give you a figure, there is 50,000 members of the IAPM, that is an internet based technician group worldwide but most of their members are in the United States. There is somewhere in the neighborhood of 250,000 certified AFC masters. If you were to take those relationships with those figures, you would notice that the ones that are participating in the finding of technical information are the ones that are able to find the information to fix cars.

Ms. SCHAKOWSKY. So would you recommend to me that I go back to the auto—the car repair shop owners that met with me in my district and just tell them, sorry, you do not have a problem.

Mr. BROTHERTON. They just need to get on the ball. It is—

Ms. SCHAKOWSKY. So all these guys are just not on the ball?

Okay, all right, I thank you, I yield.

Mr. STEARNS. The gentlelady's time has expired.

The chairman of the full committee, Mr. Barton.

Chairman BARTON. Thank you, Mr. Chairman.

I want to follow up on Ms. Schakowsky's questions here with you Mr. Brotherton. You at one time, I think supported legislation or was a part of a group that did but you have now changed your position and you are opposing. Is that correct?

Mr. BROTHERTON. Yes, that is correct.

Chairman BARTON. Okay. And you have, you are a repair—do you own a repair shop or repair vehicles?

Mr. BROTHERTON. I have what is called a Boss Service Center.

Chairman BARTON. Okay. Have you ever had any trouble getting any information from specific automobile manufacturers?

Mr. BROTHERTON. In the late 1990's we had a terrible problem. It looked like it might be the end of our business but that has been totally changed by this agreement.

Chairman BARTON. All right. Well your website has a statement on it that—and I want to quote it. I am told this is verbatim from it. "You might have to take exception to the statement of good on-line sites for VW, Audi, and Porsche. They sell their information or info in bits and pieces. They are widely told to not be in compliance with the intent of the NASTF agreement." And it is signed Steve. Is that your statement or another Steve's statement?

Mr. BROTHERTON. This sounds like it is not off of my website. But it is very easily something I could have said. There are a lot of issues if you put them into perspective. I did as I stated maybe 30,000 repairs individual repairs this year and two of them I could not do.

Chairman BARTON. Well this is from a Steve Brotherton who is the owner, technical information specialist of Continental Imports in Gainesville, Florida or purported to be. So are you saying that this is an imposter or this is not you?

Mr. BROTHERTON. What is the issue? I do not deny making that statement. I believe that Volkswagen and Porsche, Porsche is not a signer of this agreement. And Volkswagen and Audi both use a paid for document when you are dealing with information and I would not agree that they are doing a very good job.

Chairman BARTON. Well I am told that they were a signer as of the 2002 agreement. Is that not true?

Mr. BROTHERTON. My impression both Volkswagen and Audi signed but Porsche did not.

Chairman BARTON. So the way to say everything is okay is just have the manufacturers not sign any of these volunteer agreements and then they can do whatever they want to but the end result is that your customers or other repair shops customer's do not get their vehicles repaired at an independent repair shop. Is that a solution in your opinion?

Mr. BROTHERTON. The solution is not—that is in effect is not perfect and it is working tremendously for people that are doing 90 percent or 99 percent of the repairs. Porsche is a very limited market.

Chairman BARTON. Okay. Well I do not want to browbeat you, you came here voluntarily and you are trying to do good work and



you have every right to the position that you take so I am just—it seems kind of interesting that this statement——

Mr. BROTHERTON. Well I——

Chairman BARTON. [continuing] seems to be somewhat at variance with your written testimony.

Mr. BROTHERTON. I have taken exception to many of the problems that exist including the security problems with Honda, Nissan, Audi, and Volkswagen have made it very difficult and I cannot do it right now but it is not because it is not available.

Chairman BARTON. Okay. I want to ask a question of, is it Braziel?

Mr. BRAZIEL. Yes.

Chairman BARTON. You are representing the dealers.

Mr. BRAZIEL. Yes, sir.

Chairman BARTON. What is their primary concern about this agreement, volunteer agreement or the legislative solution if we have to go that route?

Mr. BRAZIEL. I think that as I mentioned in my testimony that we believe that a voluntary private sector solution is the best answer.

Chairman BARTON. How do you enforce—I do not disagree with that but how do you enforce it? We cannot even get your group, not you personally but to agree on representation on this board. I mean——

Mr. BRAZIEL. Well I think that there is agreement to have a fair and balanced board. The question is what is that fair and balanced board? And as a number of people mentioned, this is—there are many different sides to this debate. And I understand why manufacturers do not want me on their floor and I understand why aftermarket providers do not want me on their floor. So I think we have to find a way that, you know, anybody who is a stakeholder in the information needs to be represented. And if could just make one final point on that issue. It seems to me if you look at everybody around that table, not the table at the BBB but all the stakeholders, the only party, everybody other than the manufacturers are the ones seeking that information. So I do not know that we necessarily need some type of precise formula to have a 50/50 board because everybody's position other than the manufacturers and the manufacturers have the information, everybody else needs the information.

Chairman BARTON. But the dealers and I am not—I have a good relationship with my dealers in my district in my State so I am not browbeating the dealers but when a dealer has an issue on a repair issue or a parts issue, there is a—in almost every case a rapid response to that issue.

Mr. BRAZIEL. Um-hum.

Chairman BARTON. Your dealers have to pay for the equipment and pay for—I mean it is not a free service but an independent repair operator does not have it, does not have that leverage, does not have that, you know, sometimes the system works, sometimes it does not. But when it does not work, it really does not work big time and, you know, that is a difference and I think you would agree with that.

Mr. BRAZIEL. Well I think clearly due to the level of investments that a dealer makes in a service or training, the equipment that he is required to do by the manufacturer—

Chairman BARTON. But the independent repair shops have to buy the equipment and pay for the computer program and all. They are not—it is not coming to them UPS for free, I mean they are having to—

Mr. BRAZIEL. Absolutely, no question about that but I thought the intent was to ensure that access and we believe that access to be good for all markets.

Chairman BARTON. I want to ask one more question with the chair's indulgence. I want to give an antidote. I have a vehicle, a Ford vehicle that was under warranty and of course it is always the case just out of warrant I had transmission problems. So I took it to my dealer where I live. I have a personal relationship, a very positive relationship with this particular dealer. And I took it into the repair operation and they suggest Mr. Barton, it is a transmission problem. I think the quote was just to kind of look at it it was going to be \$500 and then once they looked at it it was going to be in the neighborhood of \$2,000 to \$3,000 to repair it. And it had been out of warranty just like months or so I, you know, I said I cannot afford that. I cannot pay it. I wish I could but I simply cannot. So I called an independent repair shop in a different community about 15 miles away who was an expert in transmission and had a good reputation and I said can you look at it and they said yes because the car was still drivable. I said will you charge me anything to look at it? He said no. And then I told him what the people at the dealership had told me and he said well I cannot guarantee it but based on that, I think I can do it for, repair it for \$1,000 which is not cheap. I mean, my God, you know. I just had a baby and \$1,000 buys a lot of Pampers. And so I had told the dealership that I would let them know because I, you know, I needed to get it repaired. So I called back out there and said I am going to take it over to this other community and they are going to work on it over there but I want to thank you all for taking a look at it and la-de-da. And then the guy said well what are they going to charge you? I said, well it is not for certain but he says it should not be more than \$1,000. Well then I am literally walking out the door to hop in the car to go to the other community and the dealer himself calls me back. And he says Joe, I understand la-de-da, yeah, yeah, yeah. He said we will do it for \$1,000.

Now you have to have a competitive alternative. And I am not saying the initial estimate at the dealership was a bad estimate. I mean it was—but if it had not been for the independent repair shop and, you know, that would not have happened. So all we are trying to do in this whole bill is to give people the consumers the opportunity to choose and there are going to be a lot of opportunities when they are going to choose the dealer. But there are going to be some opportunities for whatever reason they are not going to and we need to not end this bill to make that happen.

With that I yield.

Mr. STEARNS. The gentleman yields back.

Mr. DEAL?

Mr. DEAL. Thank you, Mr. Chairman.

We have had a lot things said here today that are very contradictory as others have observed. But I am going to take exception to something that was said but probably not intended in the way that I took it. And that is whether or not independent service dealerships or dealers are on the ball. The truth of the matter is that these are true entrepreneurs. They do not have a supply chain from a manufacturer that guarantees that the customer is going to come to them. If they are not on the ball, they are out of business. So I think they are definitely on the ball. The question is can we make them in a fair and competitive environment so that nobody is advantaged or disadvantaged.

There are some phrases that this panel has used which I think are very good phrases and I want to explore them. Mr. Braziel you said that the real question is equivalency of access. And I think most everybody has agreed that is really the issue, equivalency of access. Other statements that were made is Mr. Lowe said that we were really talking about two areas here, that is tools and diagnostic capabilities. Those were the two big categories. Do we all sort of agree on that? Okay, let us dissect those two if we might. First of all with regard to tools, we have heard conflicting statements on the tools. Mr. Cabaniss says that the tools are already being offered for sale. Mr. Lowe says that that was part of the agreement where it broke down was that they were not willing to make those tools available under the same circumstances.

Let me see if I can unravel the issue about tools first of all. Mr. Cabaniss, let me start with you and then Mr. Lowe if you would follows up on that issue.

Mr. CABANISS. With, excuse me, with respect to tools, the manufacturers, auto manufacturers currently make all tool information available for emissions and non-emission functions available to the tool companies. There are some cases where licensing agreements are required but in most cases that information is provided for no charge. It is then up to the tool companies themselves to decide how they use that information. They would have to look at their business case and decide whether they are going to build those functions into the tools they sell or not. The manufacturers have no control over how they use that information but it is available.

Now with regard to the facilitative agreement discussions, our problem with talking about tool and tool information had nothing to do whatsoever with this availability today or tomorrow. Our concern was discussing how to deal with tool information in the context of the BBB discussions was simply the fact that the tool companies were not at the table and that if we are going to have discussions that cover how to deal with tool issues and how to, you know, what problems there may be with the current system, then it only made sense to us that tool companies had to be part of those discussions and part of finding a solution. And so that is the—why we in the facilitation process resisted the discussions about tools.

Mr. DEAL. All right. Mr. Lowe, would you comment?

Mr. LOWE. Sure. There are two issues here and it is important to understand the distinction. There are tools that are provided by the car companies to the aftermarket that are “the only tools” and they are sold and they are supposed to be sold and have the same capabilities. But we were told during negotiations were that the

tool that we get as an aftermarket is often different than the tool that is sold to the dealer and that they would not guarantee that they would be the exact same—have the same capabilities as the tool the dealer got. They sold it to a distributor who gave it to us and that was the end of their responsibility and that was unacceptable to us. There are discontents in some cases for just warranty administration and that is fine with us. But what we wanted was a commitment that they were the same repair and diagnostic capabilities and they were not willing to do that.

The other issue on tools is the capability provided to our tool manufacturer suppliers so that they can put their capabilities into the tools. So what we agreed to there was as Mr. Cabaniss stated correctly that we were—because the tool companies were not there and because it is a very complicated issue as to what is available and how it is provided, we were willing to punt that issue to after the negotiations. However, we wanted a commitment in the agreement that all diagnostic capabilities and repair capabilities were going to be made available to us and that there would be a time-frame set for when the agreement would be set with the tool companies and that also did not—was not happening as far as the agreement. And we could not come to an agreement on that. So that is what I was referring to in the tool issue. It may be that, you know, as we were able to get through that we might be able to fix it but they were being very obtuse about that issue.

Mr. DEAL. Mr. Everett, did you want to comment on that?

Mr. EVERETT. Yes, I would agree with Mr. Lowe. In some cases there is an aftermarket version of the tool and an OEM version of the tool. Sometimes they say it is the same but when we end up getting the tools, we find that they are not always actually the same. There have been plenty of instances like that. Like Mr. Lowe said, what we were also looking for was for them to make the commitment that they would release it to our aftermarket companies so that we could let the free market, you know, adjust the cost of the tool. Sometimes these tools are quite expensive and it is just not economically feasible for a shop to purchase that tool. We were willing to let our market and our suppliers work that out.

Mr. DEAL. So we need to expand the table even further to bring the tool manufacturers into this debate and they were not there.

Mr. EVERETT. We were willing to bring them in later on, we just wanted the commitment at the time. We recognized that it was a very complicated issue.

Mr. DEAL. And that still has not been resolved?

Mr. EVERETT. Correct. They would not make the commitment and release the information needed for our tools—

Mr. DEAL. I would encourage everybody to work on that part of it.

Mr. EVERETT. And the other part was they wanted to limit us to just what is known as scan tools. We see as the industry is progressing that there are other tools other than what is commonly referred to as scan tools which basically just hook into the computer system that is coming down the line. The most common thing out there right now is some manufacturers require a different tool to reset tire pressure monitors, as simple as filling the tire up and re-monitoring the—resetting the PPMS system on the car. And we

could see lots of other tools coming down the road. If they were not included, we could be right back here again.

Mr. DEAL. It sounds to me like this could be a major part of the disagreement until it is resolved.

Okay. Let me go to the second part and that was the diagnostic capability. They obviously have some overlap between the tools and diagnostic capability. What is the biggest problem if there is with the diagnostic capabilities or is there a problem with diagnostic capability being able to be received by the people who are not at the dealership level.

Mr. LOWE. I think from, you know, we thought diagnostic tool capabilities were the same that they provide the information to the tool companies. There was the issue of the information, definition of service information in that we thought that the information that comes from the hotlines needed to be provided to the independent aftermarket if it was being provided to all their dealers to fix the car. So we were concerned that the independents could be bypassed if information was just going through the hotlines to the dealer facilities then we could not have access to that information. They were only willing to give us what was printed or what was on their TFC or a manual.

Mr. DEAL. Mr. Braziel, what is your take on that?

Mr. BRAZIEL. I would say this. The issue that we are getting to is, you know, how much are we going to put into a dispute resolution system. I think it gets back to your original point that without the toolmakers there, it becomes very difficult for these parties to negotiate. With regard to the hotline, the manufacturers were concerned that that would lead to untold dispute resolutions over whether something was told to one single dealer by one dealer tech hotline so they wanted a bright line of when we publish something to send it to all our dealers. That is the bright line that we know of that we are making that available to the aftermarket. I think quite frankly most of those dealers tech hotline questions are probably vehicles under warranty and it is not going to be in the manufacturer's interest once they have a solution to a problem to withhold that information from their dealers.

Mr. DEAL. Mr. Chairman, you have been very gracious and I am over my time.

I yield back.

Mr. STEARNS. I thank the gentleman.

Ms. Blackburn?

Ms. BLACKBURN. Thank you, Mr. Chairman. And thank you all for your patience and for hanging with us on this.

Mr. Braziel, I think with you for just a minute. We were talking in the last panel. I said that about the board governance.

Mr. BRAZIEL. Um-hum.

Ms. BLACKBURN. And let me ask you for a moment. Do you see this as a 50/50 split as to which—I want to hear your comments on this.

Mr. BRAZIEL. Sure. I made those comments to the chairman a minute ago. The 50/50 issue just to explain how difficult—

Ms. BLACKBURN. Let me stop you then because if you made them to the chairman that is while I was walking back down from the

office and I will get it from the transcript. I do not want to take my time for that.

Now I want you to tell me, we have talked a little bit about my district and what I have at this district and Mr. Everett, I have got a lot of NFIB member shops that are in my district. So Mr. Braziel, let us say we are out in rural West Tennessee and we are down in Summer, Tennessee and somebody has a car and something happens and they cannot get to Jackson or Memphis and they need to get into one of those shops but there is not a dealer there that is going to service that particular car. These folks have driven out of town and bought that car. So are the diagnostic, the tools, the codes, everything that is required to service a new car are they available to independent dealers? Would they be able to get some help? I mean or are they just going to be stuck and have to have it towed back into Memphis or Nashville or Jackson to get that car fixed?

Mr. EVERETT. Well I think I mentioned earlier that, you know, we have to kind of distinguish between equivalency of access and equivalency of outcome. And the question is whether it is accessible. Yes, it is accessible. I think Mr. Brotherton can speak to that that he has all the information and the tools that he needs.

Ms. BLACKBURN. Sounds like it does, 10 lines that he works on.

Mr. EVERETT. And so the question really becomes one of investment. Are you willing to make the, you know, based on the business model that you are working on—

Ms. BLACKBURN. So you would see it as a choice issue?

Mr. EVERETT. Absolutely. And we face the same circumstance when, you know, we are working on a used vehicle. We are going to make an independent business decision—

Ms. BLACKBURN. Okay, great. I am going to go to Mr. Everett and Mr. Brotherton and Mr. Everett, to you first. The websites that have been referenced repeatedly today, do you use those and can you get the information that you need in your shop from those websites to fix the vehicles that roll in?

Mr. EVERETT. We have lots of sources for information out there. The websites are one of the resources.

Ms. BLACKBURN. Do you use them?

Mr. EVERETT. We go through services that we contract with to provide information. I have been on the sites a few times and looked around and stuff. We count on a third party to utilize—

Ms. BLACKBURN. Okay, like Mitchells.

Mr. EVERETT. Excuse me, utilizes them regularly.

Ms. BLACKBURN. Okay. Have you heard of providers complaining about not having access to automaker service information?

Mr. EVERETT. Yes, all the time.

Ms. BLACKBURN. You hear it all the time?

Mr. EVERETT. Yes, from our members that are forced to for whatever reason send the vehicles back to the dealer. If it is too hard, too difficult, too expensive—

Ms. BLACKBURN. Okay. You are speaking for NFIB. Have you all logged this? Can you provide us with the number of times because we heard from Mr. Stanton that on his system there has only been 50 complaints so is that something that is quantifiable?

Mr. EVERETT. The only method that is out there right now that has attempted to quantify them is the NASTF process. And as I said in my testimony, it is perceived as just ineffective and a waste of time. Are members have not been participating in that. It just does not seem—there is nothing in it for the technician. They go through it and the idea of a complaint on NASTF being resolved is simply somebody answers and it does not matter whether cars actually get fixed or not. It is just a waste of time in production shop. It is very difficult for participants to do that.

Ms. BLACKBURN. Okay. My time is about to expire. Thank you, I appreciate this. I do hope as we have said earlier with the previous panel that you all can work this out and we do not have to do this for you. I do think you would rather work it out than have us do it and anyone who has an entrepreneurial bone in their body would rather keep Government from making the decision for them so I wish you all well.

Mr. Chairman, I yield back.

Mr. STEARNS. The gentlelady yields back.

I do not think there is any additional members who would seek to ask any further questions so I will conclude the hearing. But I would say to all of you and to audience thank you for coming and participating, also to those in the back who are participating and supporting the bill. We appreciate you coming here too and I know it is a lot of sacrifice for you to leave your jobs and so forth.

After hearing this, I think I am going to recommend to Mr. Barton, the Chairman, that somehow we craft a letter to the Federal Trade Commission to help create an independent board structure and a binding dispute resolution mechanism that sort of resolves the fundamental problem. I do not know how you feel about that but I am going to recommend to Mr. Barton, the Chairman that he look at that and I will do that only after talking to the Federal Trade Commission to see if they can put it in place and how they feel about it and actually working with the minority and majority and others but it seems to me after 10 hearings and 4 to 6 hours in these hearings and hearing some of the disputes that have just come out of this, that it might be something that all of you would consider as an independent board structure through the Federal Trade Commission. With that, the subcommittee is adjourned.

[Whereupon, at 1:35 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

#### PREPARED STATEMENT OF THE RETAIL INDUSTRY LEADERS ASSOCIATION

Dear Chairman Stearns: On behalf of the Retail Industry Leaders Association (RILA), I am writing in support H.R. 2048, the "Motor Vehicle Owners' Right to Repair Act." This important legislation improves consumer choices and protects the rights of ordinary Americans who enjoy performing maintenance on their own automobiles. We appreciate that you have scheduled today's hearing to consider this important issue, and urge you to support and schedule a vote on H.R.2048 in this session of Congress.

The Retail Industry Leaders Association (RILA) represents the nation's most successful and innovative retailer and supplier companies—the leaders of the retail industry. Retail is the second largest industry in the U.S., representing \$3.8 trillion in annual sales and 12 percent of our nation's workforce. RILA member retailers and suppliers operate 100,000 stores, manufacturing facilities and distribution centers throughout every congressional district in every state, as well as internationally. The leadership of its Board of Directors includes some the world's leading retail

companies, including Best Buy Co., Inc., Wal-Mart Stores, Inc., Target Corp., Michaels Stores, and other top retailers.

While current automobile technology undoubtedly provides many benefits to consumers, we understand that the inaccessibility of information related to those technologies is preventing car owners from repairing and maintaining their own vehicles. It may also be preventing them from choosing their own auto mechanic or the parts needed to make repairs. Currently, only automobile manufacturers and their dealers—not independent repair shops or owners themselves—have complete access to all of the information that is needed to make repairs and perform maintenance.

We believe it is unfair to deny consumers access to information about the products they purchase. In order to make informed decisions, consumers ought to be provided with as much information as possible about the products that they wish to purchase, including information about the proper care and maintenance of automobiles.

That is why we support H.R. 2048, legislation that would require an automobile manufacturer to disclose to the vehicle owner—or to the repair shop that they choose—the information necessary to diagnose, service, or repair their vehicle. We believe that when a consumer purchases an automobile, they have a right to expect that they own not just the vehicle, but also the information necessary to properly maintain or restore their property.

Several of our retail member companies carry automobile aftermarket products, including AutoZone, Inc., CSK Auto Corp., PEPBOYS AUTO, as well as general retailers Wal-Mart Stores Inc., Sears Holdings Corp., and others. This legislation would directly benefit millions of customers who shop at those retailers every year by improving their ability to perform routine maintenance on their automobiles. Finally, we also support the bill because it embodies an important principle embraced by the entire RILA membership—that government policies should promote free market competition by enhancing consumer choice and expanding consumer access to price competitive merchandise.

Again, we thank you for holding this important hearing, and ask that you support passage of H.R. 2048 in this session of Congress. If you have any questions about this matter, or any other aspect of RILA's government affairs program, please don't hesitate to contact me.

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#### PREPARED STATEMENT OF THE TIRE INDUSTRY ASSOCIATION

Chairman Sterns, Members of the Subcommittee, on behalf of the 5,300+ members of the Tire Industry Association (TIA), thank you for the opportunity to submit testimony for the record. This hearing on "Consumer and Mechanic Access to Industry Information on Car Parts" is very important to the automotive industry and specifically the tire industry.

My name is Roy Littlefield and I am the Executive Vice President of the Tire Industry Association. TIA is an international association representing all segments of the tire industry, including those that manufacture, repair, recycle, sell, service or use new or retreaded tires, and also those suppliers or individuals who furnish equipment, material or services to the industry. The Tire Industry Association (TIA) has a history that spans more than 80 years and includes several name changes. Originally known as the National Tire Dealers & Retreaders Association (NTDRA), the organization gave birth over the years to the American Retreaders Association (ARA) and the Tire Association of North America (TANA). ARA changed its name to the International Tire & Rubber Association (ITRA) and merged with TANA in 2002 to form the current Tire Industry Association (TIA), which now represents every interest in the tire industry.

The majority of TIA members are independent tire retailers who also perform automotive service. Our members have found it increasingly difficult over the years to service new vehicles due to the limited "sharing of information" from the automobile manufacturers. As new technology develops, this information is not readily disseminated outside the network of automobile dealers. This is why TIA fully supports the Vehicle Owner's Right to Repair Act (H.R. 2048). The House version of the bill has been reintroduced by Representative Joe Barton (R-TX) and we urge every Member of Congress to support this crucial legislation.

The Vehicle Owners' Right to Repair Act would mandate that the auto manufacturers—including all original equipment manufacturers (OEMs)—provide affordable access of all vehicle service information and tools to independent repair facilities. Anything available to the auto manufacturers' franchised dealers would be available to the independent repair facilities. At this time, the bill could not be more important to our members.



On April 8, 2005, the National Highway Traffic Safety Administration (NHTSA) issued its final Tire Pressure Monitoring System (TPMS) rule. The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act passed as a result of the Ford/Firestone crisis in 2000 included a mandate that all new passenger vehicles be equipped with a TPMS. According to this regulation, all passenger and light truck vehicles must be equipped with a TPMS system by September 1, 2007. One of TIA's largest concerns with the latest TPMS ruling is that the government is ignoring the need of independent tire dealers and automotive service providers to be given the OEM information necessary to install, service, maintain, recalibrate and fix these TPMS systems. Our members will be dealing with these monitoring systems, yet there are a variety of different companies that manufacture them, and all are slightly different. TIA members will need information from the OEMs to figure out each TPMS system and that information is not always easily accessible or available. The time for passage of the Right to Repair Act has never been more important to the tire industry or more critical to our members.

I am aware of the automobile manufacturers' agreement with the Automotive Service Association (ASA), promising that repair information and tools would be forthcoming—implying that there is no need for this bill. TIA, while viewing that agreement as a step in the right direction, sees no enforcement mechanism in the agreement and therefore still fully supports the Motor Vehicle Owners' Right to Repair Act. TIA remains concerned that without the legislation, the auto manufacturers could back out of this agreement at any time, forcing the industry to start the battle all over again from the beginning. TIA is also aware that many of the auto manufacturers are putting service information on the Internet but we hear from our independent dealer members that the information is not complete and still very costly. Furthermore, some auto manufacturers never signed the ASA agreement and therefore feel no obligation to provide any information to any independent dealers.

The automobile manufacturers that signed the letter of agreement with ASA oppose passage of the Right to Repair Act. **THIS MAKES NO SENSE!** If these manufacturers plan to keep their end of the agreement and make information accessible and affordable to independent service providers, this legislation only backs up their commitment to the automotive service industry. The fact that these manufacturers oppose this legislation causes me to question their commitment to the agreement and forces TIA to keep supporting the legislation.

Consumers deserve the right to take their vehicle to their mechanic of choice. They should not be forced to return to auto dealerships for service because independent providers do not have access to the tools and information they need to repair a vehicle. This is another critical aspect of this legislation.

Last Congress the Right to Repair Act had over 100 bipartisan cosponsors. There were concerns voiced by the Federal Trade Commission about the bill and the FTC's role in enforcement. These concerns have been addressed in H.R. 2048. The Act never intended to force the auto manufacturers to give away proprietary information or "trade secrets". This point has been clarified in the "new & improved" bill. Also, this year's bill clarifies the FTC's involvement with enforcing the mandate on auto manufacturers.

Recent negotiations between the auto manufacturers and the aftermarket were held in an attempt to come to a non-legislative resolution on the right to repair issue. These negotiations have broken down without a final solution. TIA strongly urges this Subcommittee to move H.R. 2048 to allow independent repair facilities access to the information they need to service vehicles.

I urge every member of this Subcommittee to support the Right to Repair Act by cosponsoring the bill. TIA is committed to seeing this legislation pushed through Congress for the betterment of businesses performing automotive repair and to ensure that the tire industry can service tire pressure monitoring systems during routine maintenance.

If you have any questions about my testimony, please contact me at 800-876-8372 x 108 or [Rlittlefield@tireindustry.org](mailto:Rlittlefield@tireindustry.org).